Seed Advisory Board Meeting
CDFA - Plant Diagnostic Center
3294 Meadowview Road
Sacramento, CA
8:30 AM, Wednesday Nov. 15, 2007

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1. Call to Order and Time

Chairman Keithly called the meeting to order at 8:10 am. The following members and guests were present:

Kelly Keithly	Chris Zanobini
Rick Falconer	Deborah Meyer
Gabe Patin	Allen Van Deynze
Marc Meyer	Mike Campbell
Ken Scarlett	Jim Effenberger
John McShane	Mike Colvin
Ron Tingley	John Heaton
Connie Weiner	Tim Tidwell
Betsy Peterson	Sue DiTomaso

2. Acceptance of Minutes for May 9, 2007 meeting

Patin motioned to accept the minutes of the May 9, 2007 meeting as presented.
Ken Scarlett seconded the motion.
Motion carried.

Chairman Keithly requested any changes or additions to the agenda.

There were none.

3. Seed Laboratory Report (Deborah Meyer)

Deborah Meyer provided a handout (attachment 1) to summarize seed lab activities.

She stated that the principal personnel of the lab consist of five Seed Botanists, two Agricultural Biology Technicians, one of which is shared with the Seed Services Program, one Senior Lab Assistant and various seasonal or temporary Scientific Aides that are occasionally loaned from other labs.

The laboratory workload consists primarily of seed quality assessment, seed and fruit identification, professional consultations and laboratory quality assurance. Any left over time is spent conducting research, attending professional meetings or seminars, and conducting workshops or participating on committees with seed associations.

Sample workload consists of five main categories:
Quarantine inspection samples, which are done for interior/exterior pest exclusion.
Identification samples, which are done for federal, private, state and university entities.
Mill inspection samples, which are inspected for viable weed seeds in livestock feed as part of the mill approval process.
Service samples, which are done on a fee basis for quality assessment or testing.
Regulatory or label compliance samples, which are done for seed quality assessment.

The breakdown for the 2006-2007 Fiscal Year was depicted in attachment 1- Figure 1.

The lab received approximately 2907 samples and completed 4989 tests. A pie chart illustrated that the percentage of samples by category were as follows:

Regulatory samples = 39%
Service samples = 28%
Quarantine samples = 22%
Identification samples = 9%
Feed Mill samples = 2%

Gabe Patin asked what the lab does for feed mill inspections.

Deborah Meyer replied that the mills send processed feed, which may be milled, pressed, cracked, or palletized, and the lab examines it for weed seeds. If the lab finds viable weed seeds, that is reported and the feed must be reprocessed.

Figure 2 provided a comparison of each category of samples over years. The data showed the total number of samples have declined from a high of 3500 in FY 2002-03 to the present amount of about 3000 samples in FY 2006-07. Over the years, quarantine and service samples have each provided about 25% of the samples. In 2006-07 there was a planned decline in the number of regulatory samples submitted by Seed Services, which was somewhat offset by an increase in the number of identification samples primarily from seed inspections at the border stations. Meyer noted that a change in procedures for the Origin Inspection Program has caused a reduction in the number of quarantine samples in FY 2006-07.

Figure 3 showed that the number of regulatory samples has been reduced to its present level in FY 2006-07. The present proportion of sampling devoted to vegetable seed has increased from about 32% in 2004-05 and 2005-06 to the present proportion of 48%. Concomitantly, the proportion of agricultural samples decreased from an average of 48% in the two prior years to the present amount of 36%. Lawn seed samples also decreased from a high of 22% in 2004-05 to the present proportion of 16%. Meyer noted that the chart illustrates that the Seed Services Program is placing more emphasis on the collection of vegetable seed samples than on agricultural or grass seed samples.

Figure 4 showed that there has been a reduction in the number of samples containing mixtures of seed. She explained that a reduction in the number of mixture samples causes a corresponding drop in the number of tests conducted. For example, a two component mixture requires five tests, while a single component sample only requires three tests. Because of this correlation, the number of mixture samples has a greater effect on the workload.

Figure 5 depicts the volume of service samples processed by the lab from FY2002-03 to the present date. In FY 2006-07, the lab analyzed about 627 service samples and invoiced approximately $31,000. In FY 2007-08, Meyer noted that the number of samples received year-to-date was higher than in previous years for the year to date. She felt confident that the lab would receive about 600 service samples, which is consistent with the average of prior years.

Deborah Meyer then reported that she, Jim Effenberger and Riad Baalbaki attended the annual meeting of the Association of Official Seed Analysts (AOSA) and Society of Commercial Seed Technologists (SCST) in Cody, Wyoming. Each of them directed or participated on various committees. Dr. Baalbaki also recently co-authored an AOSA Handbook on Seed Moisture Determination Principles and Procedures.

The AOSA and SCST Executive Boards have asked Ms. Meyer to establish a committee to review the existing AOSA Rules and identify obsolete methods or multiple methods of questionable equivalence. Her committee will attempt to determine if any methods need to be revised or clarified. Recent efforts have resulted in submission of about twenty rule change proposals for consideration by the AOSA and SCST membership.

Rick Falconer motioned to approve Deborah Meyer's Seed Lab Report. Marc Meyer seconded the motion. Motion carried.

4. Seed Services Finances – (John Heaton)

Heaton referenced the handout, titled "Follow-up on Bond Debt Repayment" (attachment 2). He reminded and clarified for the Board, that the Seed Lab actually has two budgets; a Seed Lab Ag Fund budget (20.30.16) and a Seed Lab General Fund (20.30.15) budget.

He provided a quick summary of the building bond debt repayment situation, stating that in 2005 the Seed Services Program informed the Board that the Seed Lab Ag Fund was running out of money. Three options were presented to the Board. The Board selected option #3, which was to only use money in the Seed Lab Ag Fund for payment of the building bond debt. All other expenses for the Seed Lab Ag Fund were to be transferred to the Seed Lab General Fund. At the time, David Godfrey estimated that the remaining funds in the Ag Fund, plus the revenue from fees for Service Samples, would be sufficient to pay-off the bond debt in about eight years.

In May of 2007, while preparing the Fund Condition Statement for the Seed Lab Ag Fund, Heaton inquired with CDFA Financial Services as to the amount projected for payment of the Bond Debt repayment in FY 2007/08. He was given the following information:

For FY 2004/05 bond debt repayment was previously reported at $30,978.42 but was now reported to be $21,468.42

For FY 2005/06 bond debt repayment was previously reported at $40,000.00 but was now reported to be $31,345.51.

For FY 2006/07, CDFA Financial Services was estimating a payment of $25,000.

For FY 2007/08, CDFA Financial Services projected a payment of $0 (zero dollars) due to an increased General Fund Bond Budget.

Since the Board was told in August 2005 that they should expect eight more years of bond debt repayment, the Board asked Heaton in May 2007, to make sure the Board was "off-the-hook" for the remainder of this Bond Debt repayment.

Heaton attempted in May 2007 and in November 2007 to ascertain the status of the future bond debt repayments. Unfortunately, he has been unable to definitively learn from CDFA Budgets Office or Financial Services if the Seed Advisory Board has indeed completed its portion of repayment for the Bond Debt. He was told that even if there was an increase in the appropriation to the General Fund Lease Bond Budget, it doesn't mean that it would get applied to the Ag Fund's portion of the bond debt. He was told that more information would be available later, once Financial Services learns how much of the bond debt was paid by the Department's General Fund on the first installment.

Heaton will report again on this situation at the next Board meeting in May 2008.

Chairman Keithly asked for questions. There were none.

Heaton then provided a handout titled "Status of Assessment Collections and the Value of Seed Sold in California" (attachment 3).

He reported that as of November 2007, there were 471 firms authorized to sell agricultural or vegetable seed in California. Approximately 209 firms are headquartered outside of California.

An analysis of reported seed sales showed that out-of-state firms reported thirty million dollars of lawn seed sales, sixty two million dollars of agricultural seed sales and eighty three million dollars of vegetable seed sales. Total seed sales in California by out-of-state firms were reported to be approximately one-hundred-seventy-six million dollars.

An analysis of reported seed sales in California by in-state firms showed about seventeen million dollars of sales for lawn seed, seventy-one million dollars of sales for agricultural seed and about one-hundred-seventy million dollars of reported vegetable seed sales.

The total reported seed sales were approximately $433,178,074 which generated assessments of approximately $1,386,170. Heaton noted that approximately $835,517 was paid by California firms, while $571,251 was paid by out-of-state firms. Combined with fees and penalties, total collections for FY 2007/08 were $1,406,768, which slightly exceeded the budget of $1,400,028 approved by the Board for FY 2007/08.

Heaton then asked the Board to reference the handout titled "Analysis of Assessments Collected on Seed Sales Made in California during FY 2006-2007" (attachment 4).

The handout provided a graphical summary of ten assessment categories and the number of firms in each assessment category. Heaton thought it was interesting to note that twenty-one California firms paid assessments in excess of $10,000, for a combined assessment total of about $558,363, while 156 out-of-state firms paid combined assessments of about $563,557.

As an additional analysis, Heaton queried the database to summarize the assessments and fees paid by firms not registered prior to the 2004/05 fiscal year. He noted that 133 new firms were issued authorization to sell seed in California since 2004/05 and paid $110,000 in assessments in the current fiscal year. Heaton complimented his staff for their efforts in enforcing the seed law and noted that the added collections are a primary reason that the Secretary has been able to keep the assessment rate at thirty-two cents despite increases in costs to the program.

Heaton then referenced the yellow handout titled "Indirect Costs." He explained that it was a communication from CDFA Financial that directed him to inform the Board that they expected an increase in Indirect Costs to continuously-appropriated or industry funded programs. The reason for the increase was because the Department decided to calculate Indirect Costs based on total budget rather than on personnel services, as previously done. Heaton explained that this change in method is in line with the change in method for calculation of pro-rata that happened the previous year, namely that the Department is using total budget instead of personnel services.

At the present time, Heaton is not sure how much the indirect costs will increase. The Staff Services Analyst for the Nursery Seed and Cotton Program summarized all of the overhead charged to each program. These included pro-rata, division IT, Direct Charge for Central Services, Division Indirect, Indirect Executive/Administration and CalSTARS charges. The total overhead was calculated to be about 15% of the budget. Heaton stated that he did not believe this level of overhead was extraordinary, especially in comparison to the overhead charged by the University of California. He asked Dr. Van Deynze if he knew what the total overhead was at UC.

Dr. Van Deynze estimated the UC overhead is around 52%, depending on the source of the money. He added that there are some exceptions.

Heaton commented that the Department handles a tremendous number of "hot" issues, including heat waves that kill cows, Light Brown Apple Moth issues and aerial spraying for pests. He noted that the Department must maintain a staff of very knowledgeable experts and professionals to travel to areas of crisis and explain the situation to citizens and the media. Unfortunately it costs money for the Department to handle all of these situations.

Heaton summarized that even with the increased costs he believes the Seed Services Program will remain in the black.

Bob Stewart asked Heaton if he believes there are many more unregistered sellers to be found, noting that he has already found 133 new registrants.

Heaton acknowledged that about 1/3rd of the firms presently authorized to sell were not previously registered. He thinks there are probably another 100 firms that have failed to obtain authorization to sell. He added that recent efforts on one company based outside of the United States brought an assessment payment of over $10,000. This collection demonstrates that the efforts of enforcement

are not just on little companies. He expressed hope that he will be able to get a list from USDA of firms shipping seed into California ports.

Gabe Patin asked what excuse companies offer for not previously paying.

Heaton replied that they typically just state that they didn't know they had to pay an assessment. He added that these kinds of enforcement actions take a tremendous amount of time because the companies usually call on the phone and attempt to find reasons why they should be exempt. It often takes numerous communications with very thorough explanations of the consequence for not following the law.

5. Seed Services Activities – (John Heaton)

a.) Status of Sampling by CDFA Biologists

Heaton referenced the white handout titled "Status of Sampling by CDFA District Biologists YTD in FY 2007-08" (attachment 5). He explained that this report is produced each month by Seed Services Staff in the lab. It provides Heaton with a running tally of the seed samples submitted to the lab by each district. He focuses on the red column because it provides him a snapshot of whether the Biologists have collected enough samples at the year to date point in time. He likes to see that value at 100% for each district, however he is not alarmed if it is not 100% because the Biologists have other responsibilities to other programs. In addition, since the majority of planting seed is only seasonally available in some districts, he expects that some Biologists will fall behind in sampling during various times of the year.

Heaton commented that the tally does not reflect the other efforts being done by the Biologists. For example, the tally shows zero samples collected by the Sacramento District. This is not entirely true however, because two of Sacramento Biologists accompanied Heaton on an investigation that resulted in 10 investigatory samples being collected for possible PVP violation.

In addition, the Riverside Biologists collected 9 samples requested by the Federal Seed Regulatory Testing Branch. Those samples are not included in the tally. It should also be noted that one of the Riverside Biologists was deployed for five weeks on the LBAM emergency project, which helped to put the Riverside tally behind.

The Redding Biologist did an outstanding job responding to a possible seed complaint in early October. Despite other responsibilities, he was able to make time to drive a couple hundred miles and collect and investigatory sample that helped to head off the seed complaint.

Heaton noted that the program met the goal of 600 regulatory samples last year and although the tally is a little low at the present time, he expects the program will meet the goal again this year.

b.) Analysis of Seed Samples collected

He provided a series of pie charts and graphs that summarized the sampling effort performed by the CDFA Biologists during 2006/07 (attachments 6 through 20).

The lab analyzed 609 regulatory samples, 283 of which were vegetable seed samples and 326 of which were agricultural seed samples (attachment 6). Ninety-two percent of the samples were found to be in compliance while 8 % failed (attachment 7). Eighty-six percent of the failed samples were agricultural seed while only 14% of the failed samples were vegetable seed (attachment 8).

Heaton explained that the reasons for lack of compliance were mainly due to the percent inert material (~48% of failures) and the percent purity (~23% of failures) stated on the label. In addition, about 10% of the failed seed samples were vegetable seeds that were mislabeled for percent germination (attachment 9).

While most of the failed samples were agricultural seed, Heaton also looked at the failed samples by crop (attachment 10). The analysis revealed that 38% of the failed samples were grass type crops, with another 16% of the failed samples being pasture mix, which could also possibly be considered a grass type crop. Roughly then, about one-half of the failed samples were grass type crops. Referencing back to attachment 9, he noted that those failures were mostly due to misstatement of the inert material. He added that a sample could become out of tolerance for inert material simply as a result of how it was shipped or even sampled. Unless the inert material was grossly misstated, he was not too concerned.

Deborah Meyer noted that tolerances vary depending on the chaffiness of species.

Jim Effenberger noted that it is a sliding scale. For example the higher you label the purity of your product, the smaller the tolerance for the inert material. Deborah Meyer noted that most lawn seed and pasture mix are not labeled that high, yet the lab found several that were out of tolerance.

Heaton stated that about 13% of the failed grass samples were due to the components not adding up to 100% (attachment 11).

Attachment 12 provided an analysis of failed seed samples by county. The greatest number of failures occurred in Imperial and San Joaquin counties, which were the counties where the most samples were taken (attachment 13).

Attachment 14 summarized the sampling effort by region or district in the state. The bulk of the sampling occurs in the Central Region, where 45% of the samples are collected. The southern region provides 24% of the regulatory samples while the Sacramento and Northern regions provide 18% and 13% respectively.

Attachment 15 illustrates the pass/fail status in each region. In terms of absolute numbers, the failure rate was comparable across regions, with an average of about 13 failed samples per region.

Attachments 16 through 19 showed the types of seed sampled in each region. The list shows that there is a tremendous variety of seed types that the lab has to test.

Sue DiTomaso commented that the graphs also illustrate how diverse California is in terms of crop production.

Deborah Meyer noted that service samples would add another set of crops that are not covered by the seed law, such as the native grasses.

Jim Effenberger added that the charts illustrate the diversity of crops that the lab must test. He reminded the Board that while labs in other parts of the county may handle more samples of one or two types of seed, the California State Seed Lab must handle hundreds of different types of seeds.

John McShane noted that the charts did not list any flower seed species.

Heaton responded that the California Seed Law doesn't regulate flower seeds.

Deborah Meyer noted that the lab does however, test flower seeds and native grasses that are not covered by the California Seed Law.

c.) Status of Seed Complaints

Heaton then referenced the blue handout titled "Report on Issues Related to Seed Complaints" (attachment 20).

The handout described various enforcement activities conducted by the Seed Services Program. Heaton explained that when a call about a possible seed complaint is received, it becomes the Program's top priority. He noted that the Program has been able to resolve several possible seed complaints by responding quickly to the issue. Heaton believes that the Board's decision to allow a reduced number of official samples collected each year, has given his staff the flexibility needed to juggle workloads and respond quickly when needed.

As an example, Heaton cited a recent call received on October 2nd regarding possible weed seed contamination. By October 4th a CDFA Biologist had met with the farmer and pulled an investigatory sample from left-over and unopened bags of planting seed. On October 11th the state seed lab reported the purity test results, which Heaton relayed to the labeler. By October 19th Heaton received germination test results from the state seed lab, which he communicated to the farmer and the labeler. It appears that the quick response by CDFA helped to clarify the situation and avoid a full-blown seed complaint, which would have required significant resources.

d.) New procedure for violations to the Federal Seed Act

Heaton reported about a new policy of the Federal Seed Lab that was reported by representative of the Federal Seed Regulatory Testing Branch at the annual meeting of the Association of American Seed Control Officials held in St. Paul, Minnesota. As of January 2007, instead of holding serious seed labeling violations until three violations are accumulated, charge sheets with a "pending" status will be sent to the labeler as soon as an investigation is complete. This action will result in faster notification to seed companies about serious violations of the Federal Seed Act. When three violations are accumulated in a three year period, the pending charge sheet will become active.

e.) Follow-up to motion urging recognition of seed sampling methods

A copy of a letter sent to the USDA's California Plant Health Director was provided to the Board (attachment 21). Heaton explained that the letter requested the USDA urge importing countries to consider three requests; recognition of equivalence of sampling when methods used by the Federal Seed Regulatory Testing branch are used instead of ISTA methods, advocacy against implementation of sampling for seed health that require the sole use of ISTA guidelines by government officials when sampling as a condition for issuance of phytosanitary certificates, and acceptance of sampling methods taught by USDA when sampling for seed health.

A conference call was conducted on October 19, 2007, as a follow-up to the letter. The topic of discussion was endorsement requirements on import permits for seed shipped to certain countries. The meeting participants agreed that a greater effort must be made to communicate with foreign governments to assure them that the seed sampling methods used by the USDA are substantially equivalent or representative of the entire lot, as the methods used by persons using the methods taught by ISTA. USDA APHIS agreed to lead the efforts to gain recognition of USDA accreditation programs.

Deborah Meyer commented that she has been urging the National Seed Health System to adopt the sampling protocol taught by the Association of American Seed Control Officials (AASCO), which is what the Federal Seed Regulatory Testing Branch bases their protocol on. She noted that ISTA has their own set of testing rules, their own sampling protocols and their own seed health protocols, which are different that what we have in North America.

Heaton stated that he believes the conference call was successful because it was communicated that USDA needs to inform countries that we have acceptable sampling methods and that the results of our tests are representative of the entire seed lot. Participants felt this could be achieved by simply requesting that import regulations of foreign countries also state acceptance of North American methods, or some facsimile of that.

Heaton added that this in an important issue because California exports the bulk of products that require phytosanitary certificates issued by the United States.

Ken Scarlett asked for the name of person at APHIS that was handling this issue.

Heaton was not sure but stated that he would find out.

Deborah Meyer added that Mike Ward is the APHIS representative on the National Seed Health System. She stated that she would follow-up by forwarding a copy of Heaton's letter to that group.

Heaton then asked Betsy Peterson to share the concern that Board member Dennis Choate expressed, about new regulations for seed going into Mexico.

Peterson stated that Choate's concern related to five new requirements for each label;

1. The label had to be in Spanish
2. The botanical Latin name for the species had to be present
3. Treated seed had to have a Spanish declaration stating that the seed was not for human or animal consumption.
4. A declaration of the seed category
5. The name and address of the importer/local company responsible for the seed

The concern about these requirements involves prepackaging and labeling seed before you know where the seed may be shipped and before you know the name of the customer that will be receiving the seed or who will be responsible for the seed.

Although CSA has a Spanish copy of the requirements from Mexico, the APHIS people were unaware of any official publications for these new requirements by Mexico.

Heaton commented that he had contacted the Federal Seed Regulatory Testing Branch and that they were unaware of these new requirements. He speculated that since these requirements appeared in September, it could be that they are so new they haven't had a chance to be implemented to any significant degree.

Deborah Meyer commented that all of the countries that require ISTA testing, use the botanical name and not the common name like in the U.S. and Canada.

Gabe Patin asked how Dennis Choate new about these requirements.

Peterson stated that her recollection is that Dennis learned of these new requirements during a company seminar and that they were related by company people in Mexico. She acknowledged that she does not know to what extent the regulations have been implemented.

Patin suggested to Keithly that perhaps the American Seed Trade Association's representative for Mexico could clarify the situation.

Chairman Keithly expressed surprise about these developments, because he routinely ships seed into Mexico and has heard of them.

Peterson noted that Mexico typically can take a long time to implement regulations or to respond to concerns.

Keithly added that each border port seems to have a different set of regulations.

Marc Meyer added that for many countries, it is not uncommon to learn of a new regulation until you get a shipment turned back at the border.

6. Status of Seed Subvention – (John Heaton)

Heaton explained that there is a provision in the seed law to pay $120,000 to county agricultural commissioners for seed law enforcement. That provision is section 52323, which is set to sunset on July 1, 2009 and be repealed January 1, 2010. Heaton asked Chris Zanobini of the California Seed Association if the industry wished to continue the seed subvention program.

Zanobini replied that the industry wants to continue seed subvention, but they do not wish to automatically pay each county $100, as presently in the law, if the county does not do any work.

Heaton replied that there are currently 18 counties that receive one-hundred dollars. He noted that AB 856 has been proposed to change the language from CDFA "shall pay" each county $100, to CDFA "may pay" each county $100.

From Heaton's perspective, even when counties do not have a labeler, they certainly have some seed being sold in their county and they do have opportunity to inform consumers or farmers about the seed law. He believed those situations alone probably justify paying the each county a minimum of $100 because they will surely have some with minimal seed law enforcement activities. He added that paying them the $100 also gets them into the program and makes them available to sit on an investigative committee if there is a seed complaint. Finally he noted that some counties previously disliked processing an entire contract just for $100. Heaton believes that this concern is no longer and issue because the CDFA Contracts Unit agrees payment can be made through a memo of understanding authorized in statute.

Marc Meyer made a motion that the Board recommend the Secretary continue to pay a minimum of $100 to each county. Falconer seconded the motion. Motion carried.

Ken Scarlett motioned that the Board recommend CSA to sponsor legislation for the renewal of seed subvention, and that the Secretary support such legislation. John McShane seconded the motion. Motion carried

7. Seed Biotechnology Center – (Campbell / Van Deynze / DiTomaso)

a.) SBC new additions and outreach

Sue DiTomaso announced that the Seed Biotechnology Center (SBC) selected Mike Campbell to be the new Executive Director. She also noted the addition of Jeannette Martins to help with production of outreach materials and Cathy Glaeser to serve as the Program Representative for the Plant Breeding Academy.

DiTomaso reported on the success of the 2007 Departmental Symposium on Translational Seed Biology. She noted that there were more than 275 participants from 17 different countries.

In February the SBC will be offering a course on Breeding with Molecular Markers. This will be the third time the SBC has offered this popular course. There are usually 60 to 70 persons that attend this 2 day course.

Other outreach activities included Kent Bradford participating in an ASTA Program known as FUSE, which is an outreach and educational opportunity for Future Seed Executives. In addition, the SBC had a tour of California legislators and a student tour sponsored by CSA.

The SBC has started advertising for the next session of the Plant Breeding Academy. DiTomaso noted that the first session will be ending in June 2008 and that the new session will also be a two year program. So far the SBC has already received 14 applicants from 5 countries for the 25 slots available. She is optimistic that more will be applying soon.

Dr. Allen Van Deynze noted that the Academy requires applicants to already have Genetics 101, Statistics 101 and an Agricultural Biology background. He stated that these are necessary as a base level to be successful in the Academy.

b.) SBC and Regulatory Issues

Dr. Allen Van Deynze reported that the USDA is reviewing their biotech regulations and will hopefully develop some new methods for regulating biotech crops. The SBC hosted a public comment meeting in connection with these proposed revisions. He noted that the USDA received hundreds of comments including comments from CSA which Van Deynze helped to draft.

Another group Van Deynze has been working with is involved with the Public Research and Regulations Initiative Group. This is an international group of public science that mainly addresses the Cartagena Protocol, which are regulations that address how biotech seed will be moved internationally. Since the U.S. will not sign the Cartagena Protocol, the PRRI group works to make sure the rules of the Cartagena Protocol are science-based. A meeting of the PRRI was held at UCD during the Seed Symposium to help educate people about the Cartagena Protocol.

The Specialty Crops Regulatory Initiative (SCRI) is a project that Dr. Kent Bradford has been working on. The SCRI is modeled after the IR4 Program, which assist with the regulatory process of registering pesticides for specialty crops. The aim of the SCRI is to develop a process to assist with the regulatory process of biotech specialty crops.

A coexistence project that the SBC has been involved with has to do with the recent re-regulation of the Roundup Ready Alfalfa. The National Alfalfa and Forage Alliance (NAFA) asked Van Deynze to moderate a meeting about coexistence. The meeting had about 80 attendees. The interests of organic producers were articulately represented by a co-author of the National Organics Program. The goal of the meeting was to address the USDA's Environmental Impact Statement for the deregulation of Roundup Ready Alfalfa. NAFA will draft a white paper about coexistence principles. The biggest issue from the organic side was a concern about being able to coexist and still produce organic seed. Van Deynze noted that nobody knew of a single acre of organic alfalfa seed being produced in the U.S. Currently the organic alfalfa seed is imported from Canada.

Van Deynze also reported that Forage Genetics performed a gene-flow study on about 200 commercial fields of Roundup Ready alfalfa. By using their management principles to control gene-flow, which involve examining the neighboring fields, they determined a worse case scenario of 0.18% adventitious presence. The average was about 0.1%. The bottom line from these types of studies is that it is not realistic to have a threshold of zero and that an acceptable level or threshold of tolerance must be agreed upon by the parties involved.

Another study that SBC has been involved with is a study to determine the effect of regulated trials for biotech crops with new traits. The analysis revealed that California has about 8.6 million acres of cropland, of which about 2.6% are organic and 0.01% of the acres are dedicated to 77 biotech trials by 21 different institutions. Van Deynze noted that people sometimes claim there are 1,200 biotech crop trials in California when in reality that is the number of total trials since 1987. The reality is that there are only 77 active trials today. The majority of the trials are corn trials, then cotton and finally canola and safflower.

On a different note, the SBC has received a grant to test the biological properties and potential for invasiveness of switchgrass, which is of interest for biofuel production. He noted that rice growers are particularly worried about the potential for switchgrass to invade and become a problem. Van Deynze added that since switchgrass in not native, it can only be grown in California under a permit situation.

Two other projects that Van Deynze is working on are the development of a technique to identify mutations in a specific gene of interest, and the development of a high-throughput Marker System for Genome-wide Cotton Research. He stated that the excellent list of cooperators was part of the reason the SBC was successful in obtaining the grants necessary to fund this research.

A project that is of particular interest to the Seed Advisory Board is the continued work on stewardship and co-existence in cotton. The current research is designed to measure the movement of genes between Acala and Pima cottons, as well as between Pimas. He expects results of these gene-flow studies to be available next June.

In total, the SBC was successful in procuring about $1 million in grants since last year.

Mike Campbell acknowledged the contribution from the Seed Advisory Board to the formation of the Seed Biotechnology Center. He expressed pride in the success of the SBC and gratitude in the investment that the Board continues to make. He stated that he believes the SBC is a partner with CSA in terms of education and outreach.

Campbell recently traveled to Washington D.C. where he met with the President of ASTA to discuss the possibility of holding a summit at UC Davis to communicate the value of seed biotechnology. Another idea is to conduct a new survey to assess the value of the California seed industry. He has also been in discussion with members of the Gates Foundation, who understand that one of the first ways you can help the poorest of the poor is to help them through agriculture, and the way to help agriculture is through seeds.

He envisions the SBC becoming the top service unit on the campus and he is optimistic about the continued partnership with the seed industry.

8. Legislative Report – (Zanobini / Peterson)

a). Current legislative session

Chris Zanobini explained that CSA has implemented a team approach to various legislative and regulatory issues. The team is composed of some very experienced individuals at CSA, including himself, Debbie Murdoch and Betsy Peterson. In addition, CSA has contracted Dennis Albiani to handle legislative affairs. Mr. Albiani used to work in the Governor's Office, and prior to that served as the head of staff for the Senate Agricultural Committee. In addition, CSA has also retained Tad Bell, who is a former Undersecretary from the California Department of Food and Agriculture. He will help with various legislative and regulatory issues.

Zanobini reported that during the first year of the present two-year legislative session, 964 bills, or 34% of the bills introduced, were passed and sent to the Governor. Of the 34% passed, the Governor signed 754 bills and vetoed 214, which is a veto rate of about 22%.

He then noted that the biggest upcoming issue will probably be the budget crisis. It is possible that CDFA will face a 10% cut across all Divisions. He expects there will be many battles to fight to ensure adequate funding for CDFA. In the mean time, there are several bills the Board should be aware of.

AB771, which provided mitigation between bee handlers and the seedless citrus industry via a conflict resolution process administered by CDFA, was passed and signed by the Governor.

SB180, which would have eliminated private ballots in order to approve representation by a labor union, was passed by the legislature but vetoed by the Governor.

SB650, which had the same language as SB180, except for 5 year sunset clause, was also vetoed.

AB515 is currently being held in the Senate and will be addressed in the next session. CSA opposes this bill which will require that OSHA set standards for permissible exposure limits to a number of different agricultural chemicals.

SB201 is opposed by CSA because it describes various practices that leafy green vegetable growers have to follow in order to deal with *E. coli* and leafy green vegetables. This bill is telling growers, who already use good agricultural practices, how they have to operate their business. The most objectionable part of the bill is that the fine for a first is $10,000 plus a possible additional $25,000 fine by the Department of Public Health. Essentially then, a grower could face a fine of $35,000 for failure to adequately perform one of the many aspects of good agricultural practices.

SB974 is also being held in the Senate. It would require the Ports of Oakland, Los Angeles and Long Beach to collect a user-fee of $20 per 20 foot cargo unit, on incoming and outgoing container cargo. The CSA believes that passage of this bill would detrimentally impact the cargo trade in California.

b.) Follow-up on County Ordinances

Heaton provided a salmon colored handout (attachment 22) titled "Chronology of discussion at Seed Advisory Board Meetings about county ordinances and a recommendation to the secretary."

In 2005 Rich Matteis, formerly with CSA, suggested that a future agenda should include a discussion for a request by the Board, that the Secretary review ordinances enacted by counties. The Chair requested that such a discussion be placed on the agenda for the May 2006 meeting.

The topic was placed on the agenda, but the discussion was tabled in May 2006 because the parties requesting the discussion were not present.

In November 2006, the discussion occurred during the report of the Seed Biotechnology Center when the Board began to talk about efforts for co-existence. Matteis commented that considering the situation of Liberty Link Rice, the time was probably not right to pass any co-existence legislation. Consequently the topic was really not addressed at the November 2006 meeting.

By May of 2007, the Board was confused as to what the original issue was and asked Heaton and Peterson to review and refresh the Board's memory about the issue, with the hope that Matteis could provide some additional recommendations to the Board. Since that time, Matteis has left CSA, so the issue will need to be addressed by the remaining staff at CSA.

Zanobini responded that Matteis did not leave any directions regarding this issue but that CSA would attempt to determine the status of the situation and report back in May 2008.

c.) AB 541 update

Peterson reported that AB541 is a strict liability bill that is presently on hold. In the interim, three meetings have taken place to educate stakeholders and legislators. The Farm Bureau and the Genetic Engineering Policy Project helped to organize the meetings, as well as Board member Ken Scarlett.

The first meeting dealt with co-mingling. The idea was to bring the same number of people from each side to discuss issues of co-mingling and co-existence, relative to biotech crops.

A second meeting covering pharmaceutical crops was held last week.

A third meeting held just a few days ago, was organized to discuss the liability issue. This meeting actually included discussions and presentations from lawyers about liability.

Peterson commented that these meetings are interesting because the clearly demonstrate how misinformation hinders effective communication and resolution of issues.

Future meetings are planned to discuss measures that can be taken to alleviate or appease concerns. Peterson concluded that one of the big concerns for supporters of AB541 is that biotechnology is taking away farmers' ability to save seed.

Sue DiTomaso noted that Kent Bradford and Allen Van Deynze have been able to attend these meetings as well. They will continue to assist in clarification of the technology and concerns associated with it.

d.) Follow-up on proposal of fines for PVP violations

Heaton referenced the purple handout titled "PVP Complaints and possible new sections for the CSL" (attachment 23).

He stated that in the past two years, the Seed Services Program has broken-up two large brown bagging operations. He commented that these incidents have convinced him that the California Seed Law does not offer much deterrence for these kinds of activity.

At the last Board meeting it was noted that Texas recently enacted a $2000 fine for violations of the Plant Variety Protection Act. The Board asked Heaton to follow-up up with information about how this might be achieved in California. Heaton met with the CDFA Permits and Regulations staff who informed him of sections 5309 through 5312 in the quarantine section of the Food and Agricultural Code. These sections could easily be modified to implement penalties for violation of labeling varieties that have PVP protection.

As an example, Heaton's drafted proposed sections 52489 through 52492 could be added to the California Seed Law. He stated that these proposed sections came from the quarantine law and were only changed slightly to reference relevant sections of the California Seed Law. They would provide the opportunity for the secretary or commissioner to levy civil penalties against persons violating section 52452(f). Heaton added that it is important to remember that civil penalties are different from civil suit, which is what a PVP certificate holder can bring against a violator of their intellectual property rights.

Heaton asked the Board if they wanted him to request CDFA Legal to review this first draft of the proposed sections 52489 through 52492. If approved by CDFA, the proposed sections could be forwarded to CSA for further consideration and possible sponsorship of proposed legislation.

John McCane asked Heaton if the PVP Certificate holders of the two recent brown-bagging cases were satisfied with the outcome or would they like to see a law enacted?

Heaton responded that they were very pleased with the outcome of the efforts by Seed Services and he does not know if they want to see a more specific law. It was during the investigations however, that Heaton realized how little strength the law had and how cumbersome it was for him to affect a successful outcome. While he was able to gather evidence, it is not really clear if he can simply turn the evidence over to the certificate holder. In addition, he noted that the law doesn't clearly define the labeling requirements for PVP.

Gabe Patin commented that this issue is really an argument between the owner of the PVP and the violator. In the past, the resolution has been made between the parties. The PVP certificate only needs to take a violator to court if they are unwilling to resolve the issue.

Heaton agreed, but he said a major obstacle to that scenario is the difficulty that the PVP holder has in obtaining the evidence. He added that articles about PVP frequently talk about the "evidentiary task" being very high for holders of PVP certificates.

Marc Meyer agreed and added that there are some serious legal ramifications surrounding how the evidence is obtained and what can actually be presented in court. It is sometimes very difficult to obtain the evidence necessary to substantiate a claim of PVP violation.

Gabe Patin asked if CDFA has the resources to pursue this.

Heaton replied that it could be achieved within the current scope of addressing labeling violations. He would simply inform violators of PVP labeling requirements that they could be fined $1000 for continuing to violate the law.

Gabe Patin asked what would happen to the fine collected.

Heaton replied that the collection could come back to the program or perhaps a potion could be awarded to counties that identify the violation. Since the counties are already inspecting labels, this might provide an incentive to be more vigilant. He added that the Program tries not be punitive but instead tries to simply get compliance. It would be nice, however, to have greater punitive measures in place if necessary.

Van Deynze asked Heaton what punitive measures are currently used.

Heaton replied that when labels are found to not be in compliance with the law, the Program has the authority to issue a "stop-sale" order.

Gabe Patin asked if the Board and the Program wants to get more involved on the PVP issue.

Heaton replied that the Program is already pretty involved. When he learns of possible violations of the seed law, he is obligated to investigate, including labeling problems related to PVP. He acknowledged however, that the actual execution of the fine might get a bit involved. The point of his presentation however, was to show the Board that there is a mechanism in the Food and Agriculture Code to implement fines for violations of the code, and that it is already being done by other CDFA programs, such as the program responsible for quarantine .

John McShane noted that the process seems to work well with Seed Services Program collecting the evidence for the certificate holder.

Heaton stated that he is not comfortable obtaining evidence for certificate holders. He stated that he believes he needs to seek a legal opinion from the CDFA Legal Office about rules of evidence and whether he can pass information to the certificate holder.

He noted that his alternative to the way he preceded is to turn the cases over to the Federal Seed Regulatory Testing Branch, which will investigate intrastate violations of PVP as well as interstate violations.

Marc Meyer believes these kinds of violations will continue to occur since the evidentiary task is so difficult for the certificate holder. He suggested taking the proposal to the CDFA Legal Department to learn what their recommendations are about penalties or fines for PVP violations.

Heaton stated that he is not anxious to fine violators. He prefers to identify the problem and have the violator come into compliance. He believes that just the possibility of being fined would compel most violators to bring the seed into compliance.

Marc Meyer stated that presently violators of PVP figure the onus is upon the certificate holder to come and find them. Because of that hurdle, enforcement of the PVP is somewhat impedant. Violators seem to have no fear about consequences for violating PVP. He speculated that perhaps it will take a regulatory agency to create the necessary deterrence to deliberate violations of PVP.

Heaton agreed.

Scarlett added that it may be that some of the people violating the PVP Act do not even know about the law.

Heaton agreed and added that one violator commented to him that there were no provisions in the seed law that dealt with PVP.

Deborah Meyer noted that the proposed language indicates a fine of "not more than $1000." She asked if that means the fine could be less.

Heaton said it could.

She suggested to simply set the fine at $1000, otherwise there may be efforts to negotiate lesser amounts.

Betsy Peterson suggested that the topic be presented to the industry at a CSA conference.

Bob Stewart noted that the only part of the PVP law that really gets into the labeling law is the part about certification or Title V.

Heaton agreed.

Bob Stewart commented that it is not possible to enforce PVP if the seed is labeled variety-not-stated (VNS) and the labeler makes no statement about PVP.

Heaton disagreed and stated that people cannot label PVP varieties as VNS.

Stewart clarified that if one states that the seed is a PVP Variety, then they cannot label it as VNS, however if they don't say it is a PVP variety and they don't say anything about PVP, then they can label it as VNS. He clarified that since they are not claiming the variety name, and are not claiming PVP, then they are able to sell the seed labeled as VNS.

Heaton disagreed and noted that he has received more than one call where an individual wanted to add left over inventory of a PVP variety into a mixture and call it VNS. He stated that when he called the FSRTB he was told that this could not be done. He believes this is accurate, otherwise a consumer could grow the seed and select PVP specimens for multiplication and he would not be aware that he is propagating a PVP variety because he was not informed it was protected when he bought the VNS seed containing the PVP variety. Heaton added that to sell a PVP variety as VNS does not offer the developer any protection of someone stealing their intellectual property.

Chairman Keithly directed Heaton to check with the FSRTB about clarification of VNS and PVP.

9. Status of Arbitration Regulations – (Zanobini / Peterson/Heaton)

Heaton referenced the brown handout titled "Status of Proposed Arbitration Regulations" (attachment 24).

He provided the background that in September 2006 CDFA Legal Counsel identified additional concerns about the proposed regulations for arbitration of seed complaints. Since September 2006 there has been a complete turnover of people involved in the development of those regulations. At the request of CSA staff, a meeting was arranged in September 2007 to review the proposed regulations and to determine how to proceed.

Heaton noted that the current regulations for the alternative dispute resolution process are in sections 3915 to 3918 of the California Code of Regulations. The regulations proposed for arbitration would have effectively over-written the previous provisions for conciliation and mediation that are already in place. Heaton asked if the intent of the Board is to replace the existing regulations with new regulations for arbitration.

The group at the September 2007 meeting determined that this was a previous point of confusion as far back as 1999. Heaton was not able to find any records that clearly stated what the industry wanted. The group decided that before CSA or CDFA could proceed, the industry and the Board will need to clarify if it's their intent to overwrite existing regulations or to add a third step of arbitration to the alternative dispute resolution process.

In the mean time, Heaton contacted the CDFA Agricultural Marketing Service (AMS), which provide staff to help Seed Services mediate the seed complaints. Their recollection was that the alternative dispute resolution process for seed complaints was to be a 3-step process. In addition, Heaton learned that an outside arbitrator, which would be required by the proposed regulations, presently costs about $450 per hour. The staff in the CDFA AMS estimate that a typical non-binding arbitration of a seed complaint will cost about $10,000.

Their parting comment was that it doesn't make sense to remove the current inexpensive and effective steps of the alternative dispute resolution process, and replace it with the more expensive process of outside arbitration. In addition, such a development would remove much of the department oversight.

Heaton also explained that the proposed regulations call for a Seed Dispute Council to be presided over by an arbitrator that can advise the Council on matters of law. The CDFA Legal Counsel informed the group that to advise on matters of law, the arbitrator will have to be an attorney.

CDFA Legal then requested CSA Legal to determine why they believe the arbitration proceedings can be kept confidential and not be subject to the Bagley-Keene Act.

Heaton reviewed for the Board, the current regulations that provide conciliation, investigation, an investigative committee meeting, and finally mediation. He noted that similar discussion was conducted recently with the members of CSA at their midyear meeting in September 2007, and he asked Chris Zanobinin to report their sentiment to the Board.

Chris Zanobini reported that the CSA Legislative Committee discussed the matter. There was consensus that the alternative dispute resolution process should be a 3-step process and that arbitration should be cost-effective and non-binding. The CSA Legislative Committee suggested that the wording of the proposed arbitration regulations could be changed to remove the requirement for a lawyer to preside. The CSA Board however, felt that if the current process is working, it may not be necessary to move forward with arbitration at this time. Before they would commit to a decision, however, they asked for the Seed Services Program to report the total number of complaints. They particularly wanted to know how many have been resolved by mediation or simply dropped, and how many are released for further litigation. Only with this information would they feel comfortable deciding if the third step of arbitration is necessary.

Heaton responded that the number of seed complaints varies from year to year. So far he has not received a complaint in 2007. The previous year he had two complaints, one of which was withdrawn by the complainant after receiving the report from the investigative committee, and one of which went as far as mediation but was released when the respondent refused to go further. In 2005, there were 28 related seed complaints that were handled as two groups. One group settled in mediation and one group failed in mediation, ultimately going to court.

Heaton commented that he believes the existing regulations work. He summarized that probably two-thirds of the complaints get settled by the mediation step and about one-third are released for

further litigation. Heaton added that his experience demonstrates that probability of a seed complaint being resolved through the alternative dispute resolution process is very dependent upon how fast the parties involved address the problem and how well the Program conducts the investigation. As an example he recalled one case where he collected soil samples and the state Seed Lab did an outstanding job in identifying every seed that was in each sample, ultimately showing that the weed seed was in the soil before planting and not in the planting seed.

Gabe Patin noted that he believes part of the success for the existing process is the fact that a committee of two agricultural commissioners, two growers, two labelers, and other interested parties, are willing to sit in room and listen to the issues.

Heaton reiterated that he believes a successful process is in place already and he asked the Board if they want to replace those existing regulations with the proposed regulations or non-binding arbitration, which would cost about $10,000 per arbitration.

Ken Scarlett asked Chris Zanobini if CSA has a recommendation for the Board.

Zanobini noted that since CSA has been trying to get arbitration in place for the last 10 years, there is a bit of a feeling that we have to see it through. He acknowledged that it is not clear what should be done. There was concern by CSA members that if the industry gives up, it sets a precedent that if the Department stalls long enough, the requests of industry will go away.

Heaton stated that he understands that sentiment, however he does not want to put something into code that removes a process that works, just because of precedent. He suggested that perhaps a less specific third step could be added to the process, something like "upon failure to reach agreement in mediation, CDFA will urge the disputing parties to arbitrate," or "facilitate the scheduling of third party arbitration."

Zanobini commented that the CSA Legislative Committee would like to see a third step, but that it needs to be cost-effective. The CSA Board was not certain if the third step was even needed.

Chairman Keithly directed Heaton and Zanobini to explore the development of a third step to the alternative resolution process that would address the concerns expressed by CSA and CDFA.

10. Nominating Committee - (Gabe Patin and Marc Meyer)

Gabe Patin noted the appointment of Paul Frey to the unexpired term of Ron Tingley and the appointment of John McShane to the unexpired term of Bill Van Skikes.

Patin noted that several terms will be expiring March 31, 2008 and he made a motion that the following individuals be recommended to the Secretary for reappointment.

John McShane	Kelly Keithly	George Hansen
Rick Falconer	Dennis Choate	

Ken Scarlett seconded the motion. Motion carried.

Heaton reminded the Board that although they passed a motion for recommendation of reappointment, the Department's policy is to post the Board vacancies so that other people have the opportunity for consideration to serve on the Board as well. He explained that if anyone else contacts him about serving, he will also present their name for consideration by the Secretary along with the recommendations just approved by the Board.

Chairman Keithly announced that there will be an officer election at the May 2008 Board meeting. The offices for election are President and Vice Chair. Keithly appointed an Officer Elections

Committee composed of Rick Falconer as the Chair, John McShane and Dennis Choate as members. They will report back to the Board at the next meeting, at which time an election will be conducted.

Chris Zanobini requested a discussion about a motion passed by the CSA Board, to allow dealers and not just labelers, to serve on the Seed Advisory Board.

Mike Colvin asked if such a change would require a change in the regulations.

Heaton replied that to change the composition of the Board would require a statutory change. He added that CSA would have to find a sponsor to request the legislature make the change in law.

Gabe Patin suggested that the Board approve the recommendation to allow dealers to serve on the Board.

Marc Meyer asked for more discussion and requested clarification about exactly what such a change would involve.

Heaton read the current section 52291. "There is in the Department a Seed Advisory Board consisting of eleven members appointed by the Secretary nine of whom shall be labelers registered under the provisions of this chapter and two of whom shall be members of the public."

He added that the proposed changes could instead say that the nine members would have to be labelers *or seed dealers*. He noted that the big difference between labelers and dealers is that labelers are the ones that are responsible for paying the assessment. Dealers do not pay assessments.

Marc Meyer commented that he believes there is a needed component from dealers, however the people that pay the assessments should be the major component of the Board.

Patin noted that the Board has had dealers as members in the past. Meyer stated that he understood that but he reiterated that the major component of the Board should be labelers.

Falconer commented without a limitation on the number of dealers, the Board could become populated with all dealers.

Heaton added that a Board of all dealers might not be as reluctant to increase the assessment rate since they are not the ones directly paying it.

Zanobini suggested that the legislation could be written in such a manner as to maintain a majority component of labelers.

Scarlett suggested that the legislation could provide for seven labelers, two dealers and two public members. Patin agreed.

Zanobini requested that the Board address the restructuring issue now so that CSA could move ahead with proposed legislation.

Patin motioned that the Board be comprised of eleven individuals, two of which are public members, two of which may be dealers, and the remaining balance to be seven labelers.

Ken Scarlett seconded the motion. Motion passed.

11. Closed Executive Session

Chairman Keithly asked if any of the Board members felt it was necessary to meet in closed session. No requests were made.

12. Reconvene from Closed Executive Session – not necessary. No requests.

13. Public Comment Period

Chairman Keithly asked if any member from the audience wished to address the Board. No requests were made.

14. Other Items

a.) Next meeting date

Chairman Keithly set the date for the next Board Meeting for Thursday May 15, 2008 at the Seed Biotechnology Center in Davis.

b.) Recognition of Service

Chairman Keithly formally recognized and thanked departing Board members Ron Tingley and Bill Van Skikes for their years of devoted service.

15. Adjournment

Chairman Keithly requested a motion to adjourn.

Scarlett motioned that the meeting be adjourned. Falconer seconded. The motion carried and the meeting was adjourned at 11:30 am.

Respectfully submitted by John Heaton, CDFA Secretary to the California Seed Advisory Board

16. Attachments

Attachment 1

CDFA Seed Laboratory Report
Seed Advisory Board Meeting
November 15, 2007

The Seed Laboratory staff of the Plant Pest Diagnostics Branch consists of five Seed Botanists, two Agricultural Biological Technicians (one shared with the Seed Services Program), one Senior Laboratory Assistant and additional support from temporary, part-time Scientific Aides (some on loan from other labs). The laboratory workload consists primarily of seed quality assessment testing, seed and fruit identification, professional consultations, laboratory quality assurance (i.e., equipment maintenance and calibration, database entry, document preparation, database management, seed herbarium curation, etc.). The remainder of the time is devoted to professional enhancement activities, such as seed research, professional meeting attendance, workshop and seminar presentations, professional organization committee work and other activities mandated by the department.

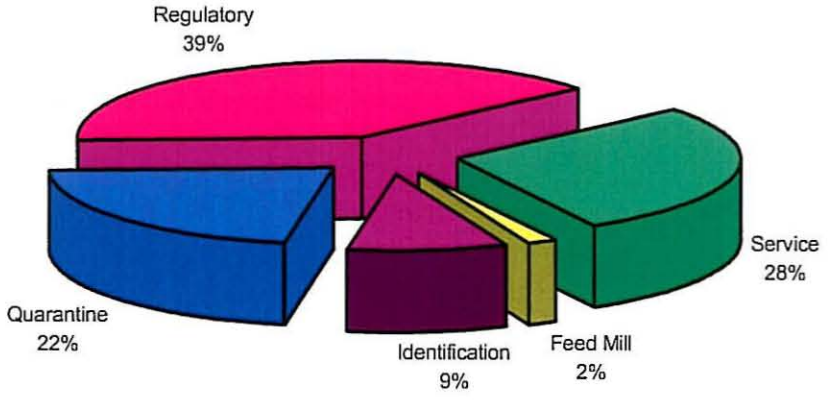
Sample Workload

The Seed Laboratory sample workload is segregated into five general categories: (1) quarantine noxious weed seed examination in support of both interior and exterior quarantine inspection programs; (2) identification of unknown seeds and fruits submitted from a variety of sources, including federal, state, county, university, and private entities; (3) mill approval inspection for viable weed seeds in livestock feed; (4) fee based service sample seed quality assessment testing; and (5) regulatory label compliance testing, also for seed quality assessment. A summary of the Seed Laboratory sample workload for the 2006-07 Fiscal Year is given in Table 1. The percentages of tests completed representing each sample type are given in Figure 1 (pie areas represent the percentage of each sample type within the workload, not the percentage of time required to complete the tests).

Table 1. Sample workload for 2006-07 Fiscal Year.

Type of Sample	# Samples Received	# Tests Completed
Quarantine inspection	1078	1078
Identification	424	458
Mill approval	84	84
Service	627	1395
Regulatory label compliance	694	1974
Totals	**2907**	**4989**

Figure 1. The percentages of the test workload representing each sample type for the 2006-07 FY.



A comparison of overall sample workload and breakdown by sample type for the last five fiscal years is given in Figure 2. As expected, the numbers of regulatory samples dropped due to the change in the seed-sampling program (i.e., county sampling suspended and state sampling initiated). The laboratory experienced a 376% increase in the number of identification samples received this fiscal year compared to last year because of increased emphasis on private vehicle inspections at the border stations. There was an unexpected drop in the numbers of quarantine samples because of a change in the demand for inspection under the Origin Inspection Program (OIP). As a result of these changes the total number of samples received was the lowest for the last five fiscal years.

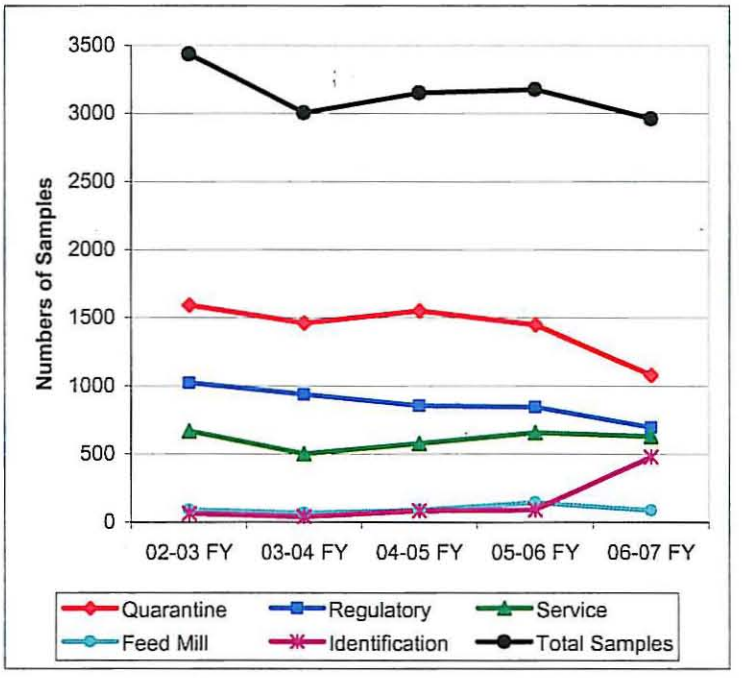


Figure 2. Comparison of numbers of samples received for each type of sample and total number of samples received for the last five fiscal years.

Regulatory Samples

Although the overall numbers of regulatory samples have steadily decreased over the past three fiscal years, as planned, during the 2006-07 FY the proportion of the regulatory samples devoted to vegetable seed increased and correspondingly samples of agricultural crops decreased (Figure 3). The percentage of samples drawn from lawn seed decreased only slightly.

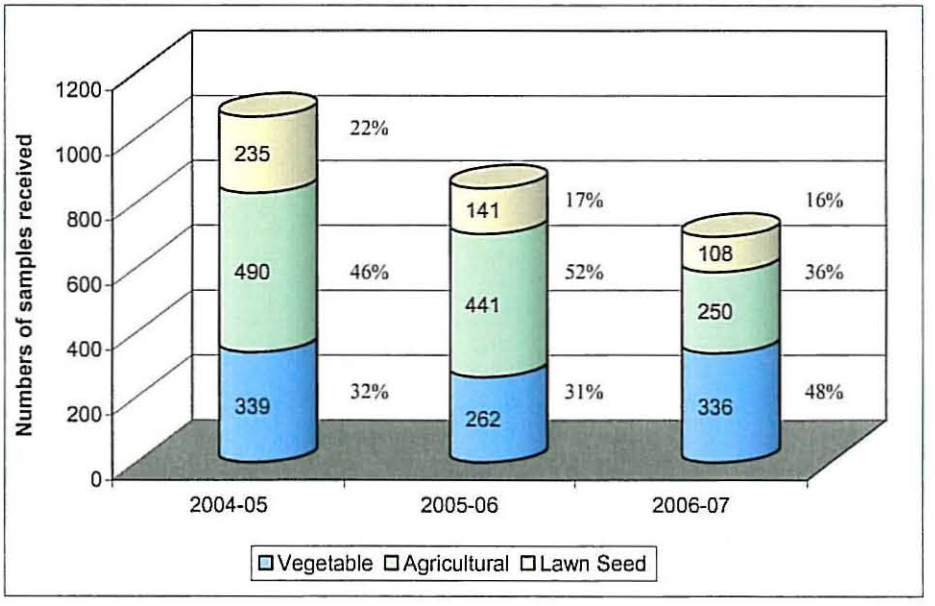
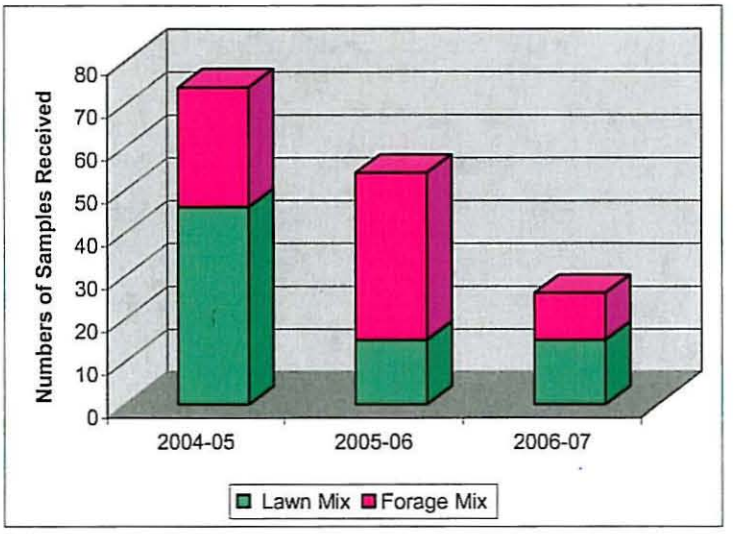


Figure 3. Types of regulatory samples received for the 2004-05, 2005-06 and 2006-07 fiscal years.

Additionally, the numbers of forage, pasture and lawn seed mixtures (i.e., mixtures of two or more kinds of seed) has steadily decreased over the last three fiscal years (Figure 4). The decline in the number of seed mixtures has contributed to the decline in the total numbers of purity and germination tests required. For example, a mixture consisting of two kinds of seed translates to a minimum of five tests in the laboratory (i.e., one noxious weed seed exam, two purity tests and two germination tests), whereas a sample of a single kind of seed requires only three tests (i.e., a noxious weed seed exam, purity analysis and germination test). As the number of kinds increases in a mixture, so does the number of tests required.

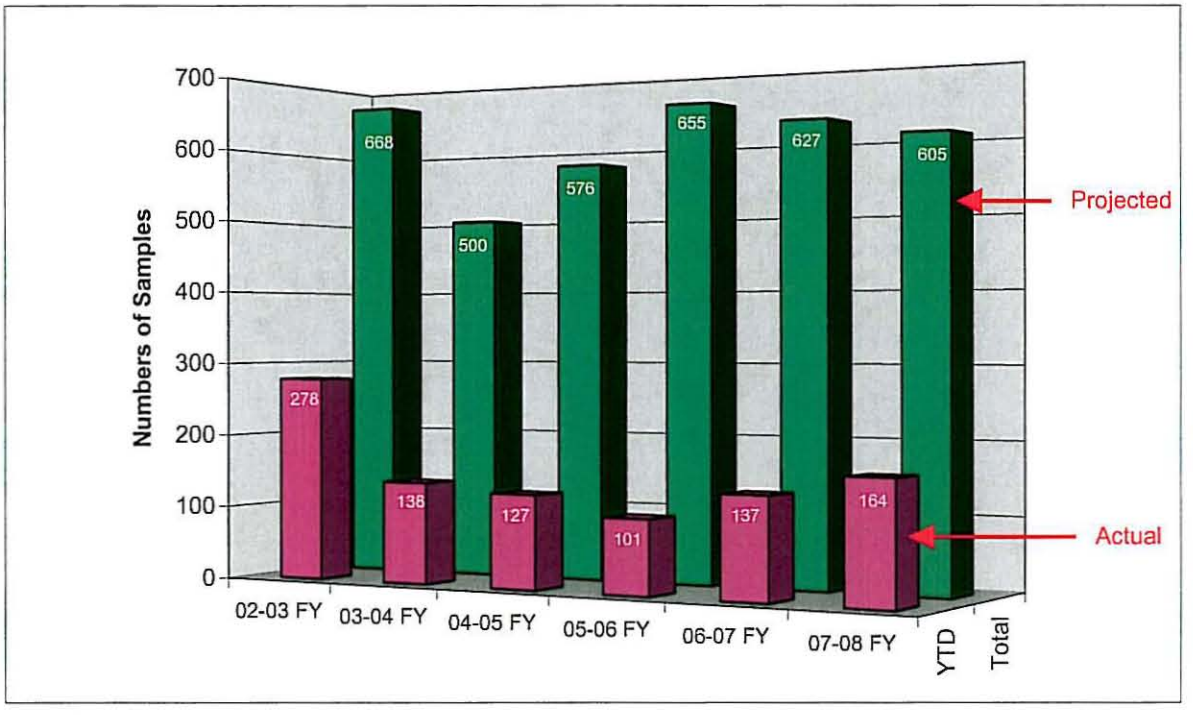
Figure 4. Types and numbers of regulatory seed mixtures.



Service Samples

Service sample invoicing for the 2006-07 FY was $30,995, representing 627 samples received. First quarter sample numbers indicate a potential increase in service sample testing for the 2007-08 FY (Figure 5) as this is the highest number of service samples received in the first quarter since the 2002-03 FY. The projected number of services samples for 2007-08 FY, shown in Figure 5, is based on the average number of samples received for the previous five years.

Figure 5. Six-year comparison of first quarter (year-to-date July – Oct; YTD) versus total service sample workload



Out-of-state Travel

In June, Deborah Meyer, Jim Effenberger and Riad Baalbaki attended the Association of Official Seed Analysts (AOSA) and Society of Commercial Seed Technologists (SCST) annual meeting in Cody, Wyoming. The out-of-state trip report is attached for your review.

Symposia and workshops

At the AOSA/SCST Annual Meeting, Ms. Meyer was an invited speaker at the Native Seed Symposium. She gave two presentations: (1) Pure seed versus inert matter: How do you know when testing native species, and (2) Laboratory sampling, purity and viability test relationships (a joint presentation with Mr. Larry Prentice, Mid-West Seed Services, Inc., Brooking, SD). The focus of the symposium demonstrated the need for improved laboratory testing methods to assess seed quality of native species that do not have the same physical and physiological attributes as conventional cultivated crops.

Also at the AOSA/SCST Annual Meeting, Dr. Baalbalki served as co-organizer and instructor for the Statistics Workshop. Participants were instructed on principles of experimental design, data analysis and interpretation of results, as well as use of online statistical analysis programs.

In September, Ms. Meyer, Mr. Effenberger and Dr. Baalbaki attended the Translational Seed Biology Symposium sponsored by the UC Davis Seed Biotechnology Center.

Publications

Dr. Baalbaki, along with Dr. Sabry Elias (Oregon State University Seed Laboratory) and Dr. Miller McDonald (Ohio State University) authored the recently published AOSA Handbook on Seed Moisture Determination Principles and Procedures.

Seed Testing Rules

Following the 2006 AOSA/SCST Annual Meeting, the AOSA and SCST Executive Boards asked Ms. Meyer to establish a committee (Rules Issues and Review Committee) with the purpose to review the existing AOSA Rules and identify obsolete methods or multiple methods of questionable equivalence. The committee was also charged with determining ways to clarify the text to eliminate the potential for multiple interpretations leading to non-uniformity of test results within and among laboratories. As a result of the first year of work by the committee, Ms. Meyer has submitted nineteen AOSA rule change proposals related to seed sampling, purity testing and other examinations. Dr. Baalbaki and the Germination and Dormancy Subcommittee have also submitted proposals related to germination testing for this same purpose.

Service to Professional Organizations

Jim Effenberger

- Member – Executive Board, AOSA (2005 – present)
- Chairperson – Bylaws Committee, AOSA (1995 – present)
- Chairperson – Ethics Committee, SCST (2003 – present)
- Member – Purity Testing Research Subcommittee, AOSA (1994 – present)

Riad Baalbaki

- Chairperson – Germination and Dormancy Research Subcommittee, AOSA (2006 – present)

- Co-chairperson – Vigor Evaluation Research Subcommittee, AOSA (2007)

Deborah Meyer

- Associate Editor – Seed Technology, 2001 – present
- Chairperson – Rules Issues and Review Committee, AOSA (2006 – present)
- Chairperson – Purity Testing Research Subcommittee, AOSA (1994 – present)
- Member – Purity Committee, International Seed Testing Association (ISTA) (1995 – present)
- Member – Registered Seed Technologist Board of Examiners, SCST (2002 – present)
- Member – Community Advisory Council of the College of Natural Sciences and Mathematics, California State University, Sacramento (2005 – present)
- National Plant Board Representative – National Seed Health System – Seed Testing Working Group (2000 – present)
- Member – AOSA/SCST Task Force studying the feasibility of merging the two organizations into one North American Seed Testing Organization.

Attachment 2

Follow-up on Bond Debt Repayment
Presented by John Heaton
Seed Advisory Meeting Nov. 15, 2007

Remember that in Nov. 2005 the Board was presented with 3 options of how to handle the declining funds in the Seed Lab. Ag Fund.

The Board approved the third option, which was to use money in the Seed Lab Ag Fund (Code 20.30.16) to only pay the bond debt. All of the expenses for the Seed Laboratory Ag Fund (20.30.16) would be transferred to the Seed Laboratory (20.30.15). At that time, David Godfrey estimated that the remaining funds in the Ag Fund of 20.30.16 could be used to pay off the bond debt, which will take about 8 more years.

Last May, in preparing the Fund Condition Statement for the Seed Lab Ag. Fund, Heaton was told that the following:

04/05 was $30,978.42 has been changed to $21,468.42
05/06 was $40,000.00 has been changed to $31,345.51
06/07 estimated 25,000.00
07/08 estimated zero due to increased GF Lease Bond Budget

Since this was different than what the Board was expecting, immediately after the Board meeting, Heaton sent the following email on May 10, 2007.

"Marlene,
The Seed Advisory Board was very pleased with the Bond Debt Repayment numbers. Thank you.

I don't know if you can answer this question, but if not, perhaps you can forward this question to the person or people that can.

One question the Seed Advisory Board had about the zero dollar projection for future Bond Debt Repayments, is if the payment goes to zero, does this mean that the Board is off the hook for the remaining years that they expected to pay the Bond Debt?

In August 2005, they were given the information they had about 8 more years of payments at around 30K per year.

They just want to know if they can reallocate money for different expenditures in the future.

Thanks
John Heaton"

The reply from the Budget Office was different than what was received from Financial Services.

On May 11, 2007 Heaton received the following email from the Budget Office.

"Hi John,
We have the budget numbers for the bond debt payment for the 2007-08 fiscal year only. We cannot confirm for any year beyond 2007-08 that your bond debt payment will be anything except what is on the amortization schedule given to you previously. Please let me know if you have any other questions. Thanks!

Angela Guzman
Staff Services Manager
Office of Budgets & Program Analysis
Ca Department of Food & Agriculture
916-653-7516
aguzman@cdfa.ca.gov

Since the Budget Office could not confirm any future projections, Heaton decided to wait before asking again.

On November 1, 2007 Heaton explained the situation in an email to the new Financial Analyst and asked for clarification.

The new Financial Analyst believes that an error was made last spring and that the Bond Debt is still due, however she won't know for sure until later in November.

When the bond was originally put into place, it was agreed that the General Fund would pay a portion of the debt and the CA or Ag Fund Programs would pay a portion.

Even if there was an increase in the appropriation to the General Fund Lease Bond Budget, that doesn't mean it would get applied to the Ag Fund's portion of the debt.

This appears to be where the previous Analyst made a mistake. We will know for sure later in the month, when we learn how much was paid on the first installment by the General Fund.

Attachment 3

Status of Assessment Collections and the Value of Seed Sold in California Presented by John Heaton Sr. Ag. Biologist CDFA Seed Services Program Seed Advisory Board Meeting - November 15, 2007

For the 2007-08 renewal cycle, 471 companies obtained authorization to sell seed in CA. Many of these firms do business under more than one name, making a total of 626 firms listed on the directory of firms authorized to sell seed.

It is of interest to note that of the 471firms authorized to sell seed in California, 209 of them are from out of state.

Seed sales reported for fiscal year 2006-07 broke down as follows:

Sales Reported:	Lawn Seed	Agricultural Seed	Veg Seed	Total Sales	Assessments
Out of State Firms	$30,157,439	$62,153,224	$83,800,857	$176,111,520	$563,557
CA Firms	$16,751,934	$70,740,120	$169,574,500	$257,066,554	$822,613
Totals	$46,909,373	$132,893,344	$253,375,357	$433,178,074	$1,386,170
Assessment	$150,110	$425,259	$810,801	$1,386,170	

These sales generated assessments of approximately $1,386,170

Combined license fees, assessments and penalties collected during the current renewal cycle were $1,406,768 which is about $7,000 more than the approved budget for Seed Services.

Breakdown of collections (including fees and penalties) were as follows:

CA firms paid $835,517
OS firms paid $571,251
Total paid $1,406,768 which is > $1,400,028 approved by the Board for 07/08

Collections from firms not previously registered:

Since 2004/05 the Seed Services Program has received requests for authorization to sell seed in California from 133 firms not previously registered. These firms paid approximately $110,000 in license and assessment fees during the most recent renewal period. The amount paid by the fifty five firms located in California was approximately $60,000. The difference was paid by 78 firms located outside of California.

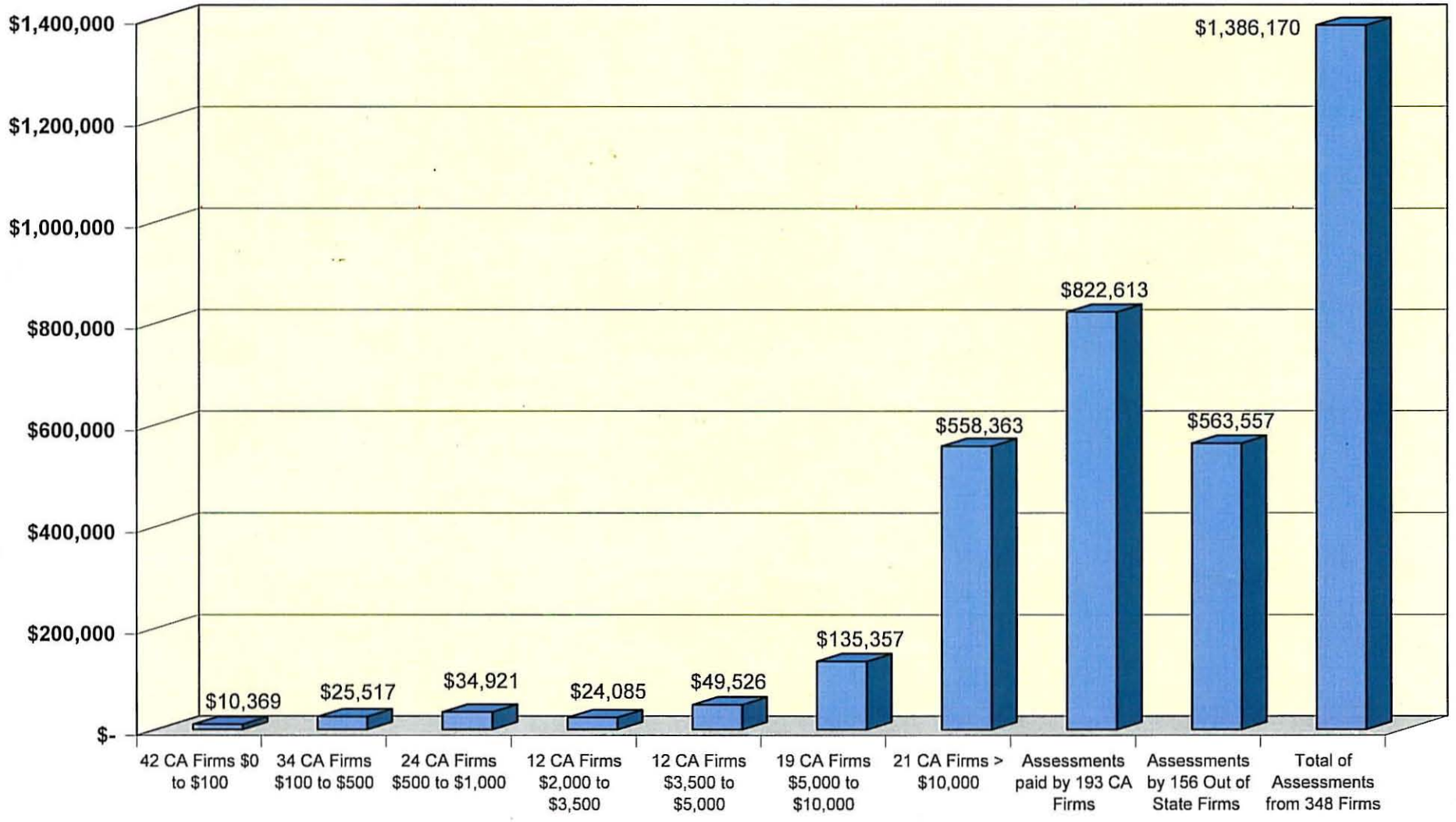
This $110,000 is more revenue than the Secretary would expect to generate if increased the assessment rate by one cent on the firms authorized to sell seed in California prior to FY 2004-05.

In other words, the efforts by CDFA to identify firms that were previously unauthorized to sell seed in California has meant that the Board has not recommend to the Secretary that he increase the assessment rate on firms that are operating according to the law.

CDFA will continue to explore ways to identify firms that have not obtained authorization to sell seed in California and to collect appropriate fees.

Attachment 4

ANALYSIS OF ASSESSMENTS COLLECTED ON SEED SALES MADE IN CALIFORNIA DURING FY 2006-2007



Presented at Seed Advisory Board Mtg. Nov. 15, 2007

Figure 1.

Status of Sampling by CDFA District Biologists YTD in FY 2007-08

District	Approximate number of Samples to be collected monthly by District	Samples received by the CDFA Seed Laboratory for December 2007	Samples received in December 2007 that are on hold for errors	Samples released to the CDFA Seed Laboratory in December 2007	Number of samples released to the CDFA Seed Lab YTD	Number of samples needed to be collected for 2007-2008 fiscal year	Number of Samples that should have been collected YTD	Number of samples successfully collected so far	Percentage of completion for collecting required samples YTD	Percentage of completion for collecting required samples for entire year
Redding	6			0	**1**	72	36	1	**2.8**	1.4
Sacramento	9.5			0	**0**	114	57	0	**0.0**	0.0
Fresno	22.5			0	**114**	270	135	114	**84.4**	42.2
Riverside	12			0	**25**	144	72	25	**34.7**	17.4
Totals	50	0	0	0	**140**	600	300	140	**47**	**23.3**

Attachment 5

Comparison	Percentage complete for the entire year is the same as last year @ 23%. This is about 75% of what counties historically submitted (See Nov. 2005 SAB Notes), but still comparable since there are fewer mistakes.
Sacramento	Tally does not reflect 10 investigative seed samples collected for possible PVP violation
Riverside	One Biologist was assigned to LBAM for 5 weeks & the other had surgery and was out for about 6 weeks Riverside Biologists have collected 9 samples for submission to FSRTB. Riverside Biologists worked with Imperial County to tactfully handle a seed borne pathogen issue.
Redding	Assisted in investigation of possible seed complaint.

Ag Seed Samples vs. Veg. Seed Samples in FY 2006/2007

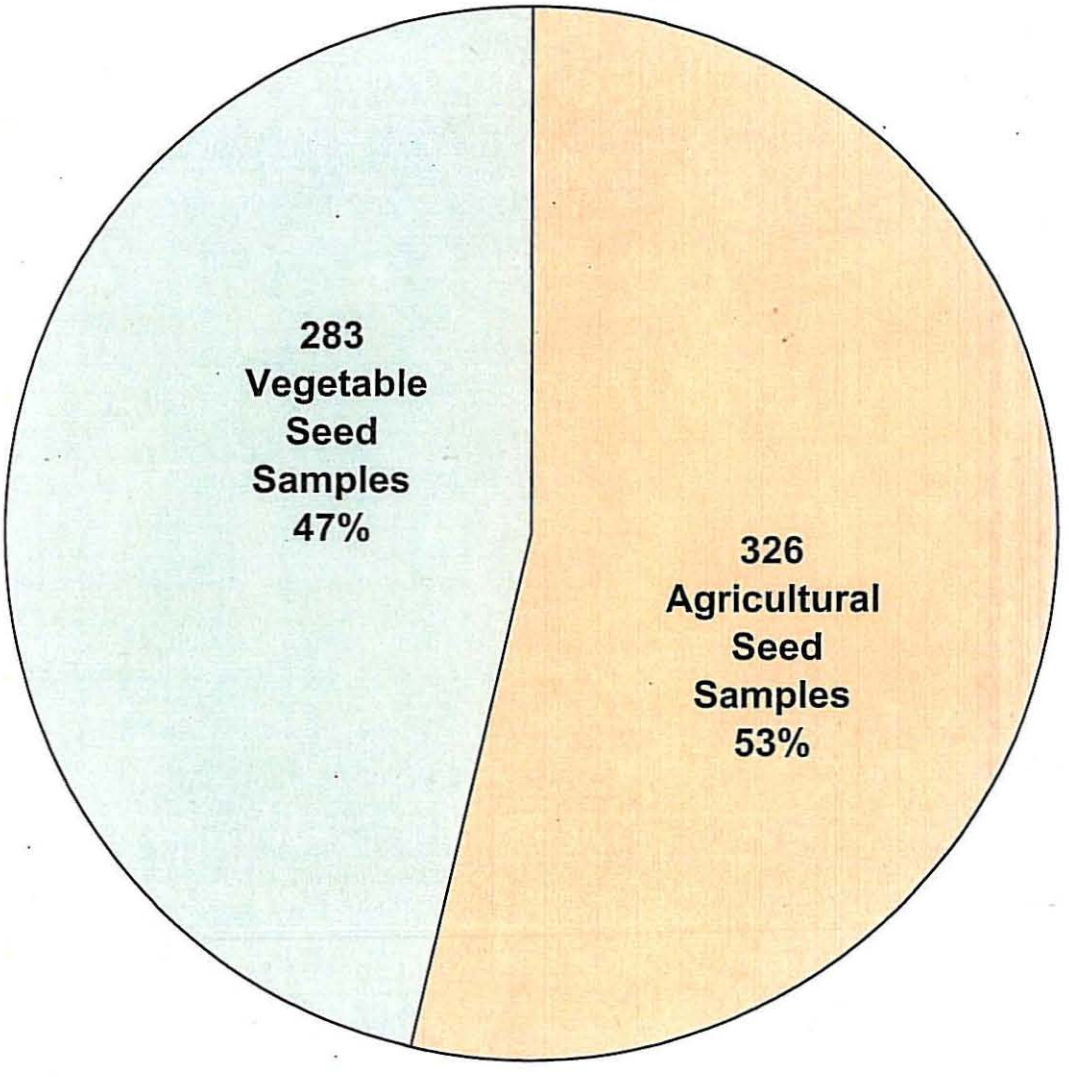


Figure 2.

Attachment 7

Percentage of samples in Compliance during FY 2006-2007

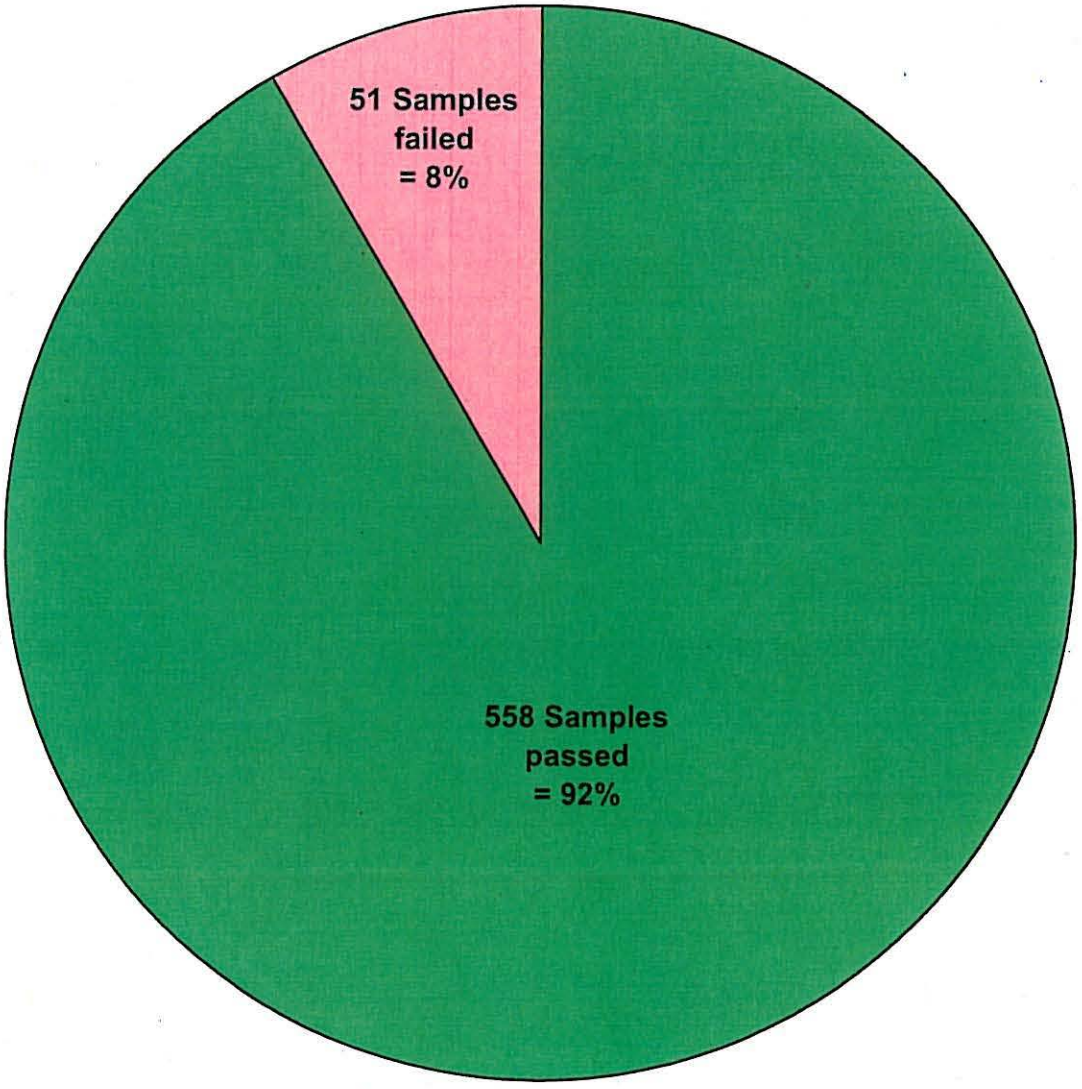


Figure 3.

Attachment 8

Proportion of Failed Seed Samples collected during FY 2006/07

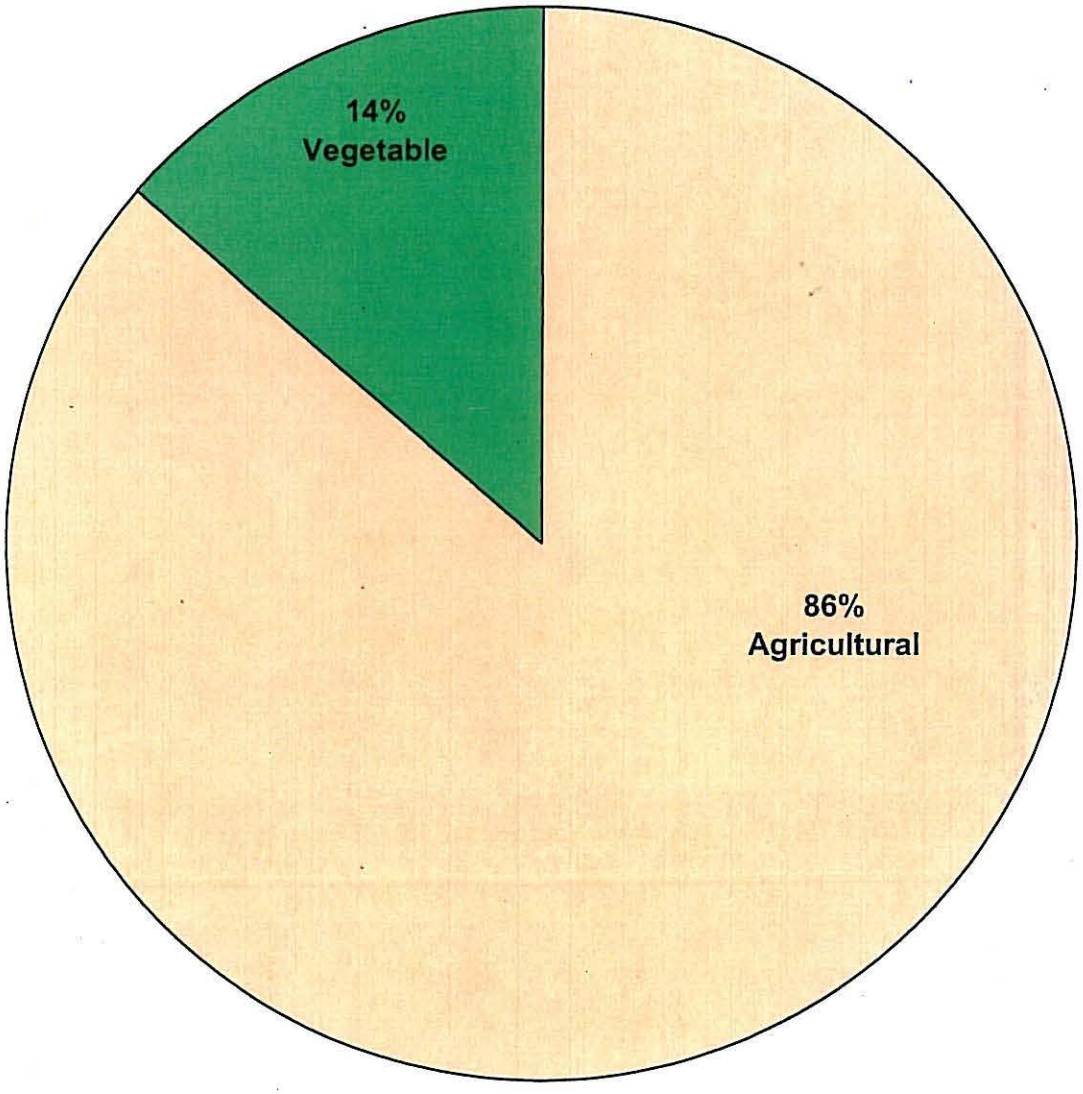
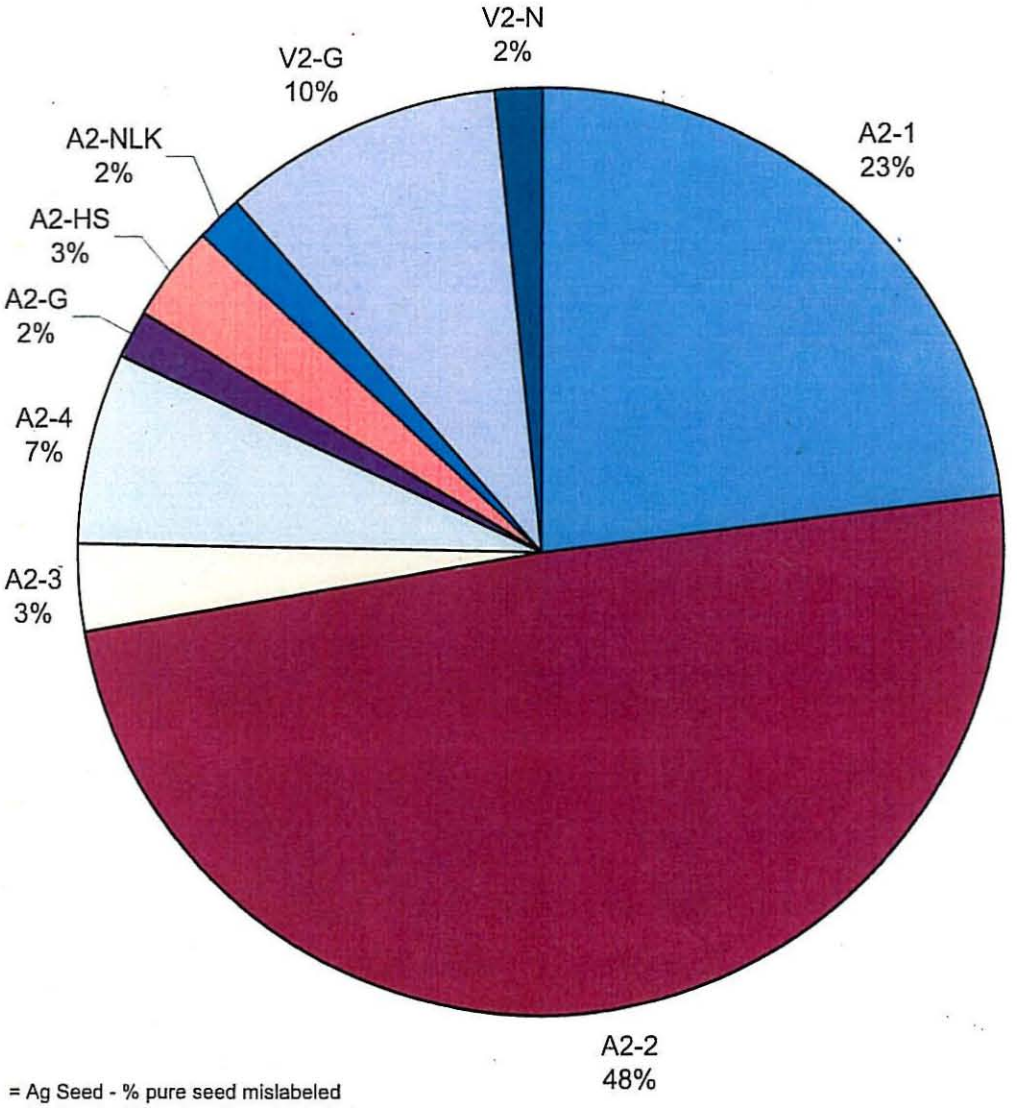


Figure 4

Attachment 9

Grouping of Reasons why 51 seed samples collected in FY2006-2007 were not in compliance



A2-1 = Ag Seed - % pure seed mislabeled
A2-2 = Ag Seed - % inert matter mislabeled
A2-3 = Ag Seed - components < or > 100%
A2-4 = Ag Seed - % weed seed mislabeled
A2-G = Ag Seed - % germination mislabeled
A2-HS = Ag Seed - % hard seed mislabeled
A2-NLK = Ag Seed - kind not properly labeled
A2-PI = Ag Seed - % purity and % inert mislabeled
V2-G = Veg Seed - germination < standard
V2-N = Veg Seed - lacking varietal name

Figure 6.

Attachment 10

Analysis of Failed Seed Samples by Crop for FY 2006-2007

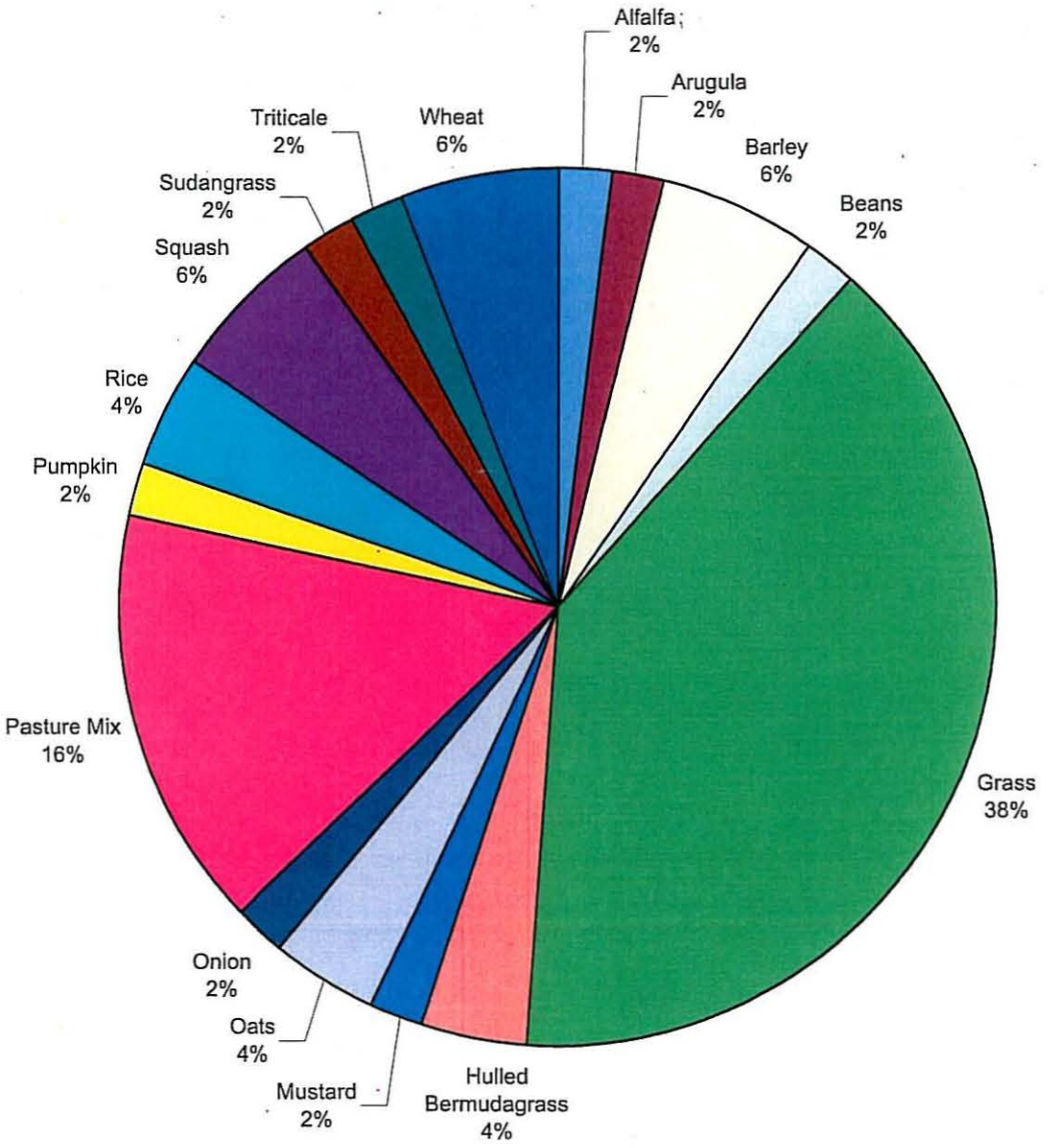
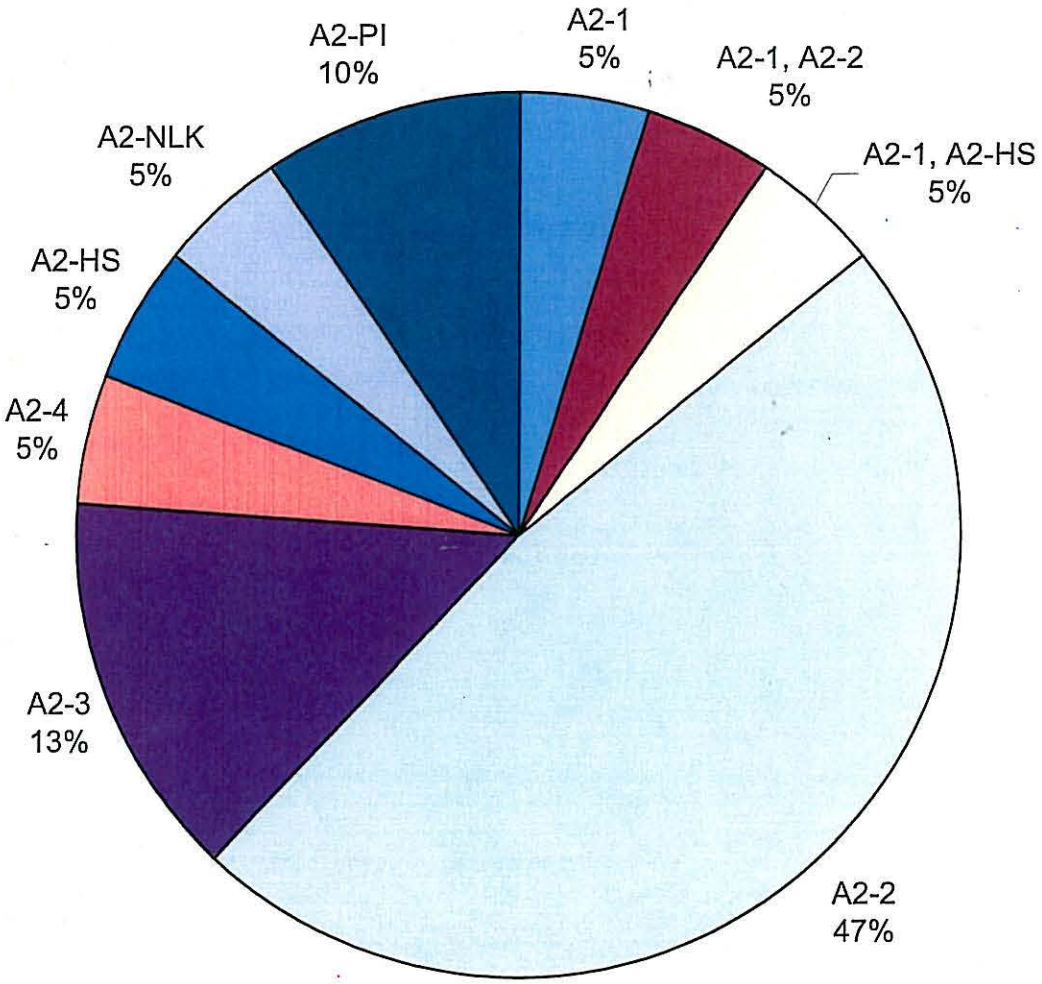


Figure 7.

Attachment 11

REASONS FOR FAILED GRASS SAMPLES COLLECTED DURING FY 2006-2007



A2-1 = Ag Seed - % pure seed mislabeled
A2-2 = Ag Seed - % inert matter mislabeled
A2-3 = Ag Seed - components < or > 100%
A2-4 = Ag Seed - % weed seed mislabeled
A2-G = Ag Seed - % germination mislabeled
A2-HS = Ag Seed - % hard seed mislabeled
A2-NLK = Ag Seed - kind not properly labeled
A2-PI = Ag Seed - % purity and % inert mislabeled

Figure 8.

Attachment 12

Tally of Ag & Veg Seed Samples that Failed in each County during 2006/07

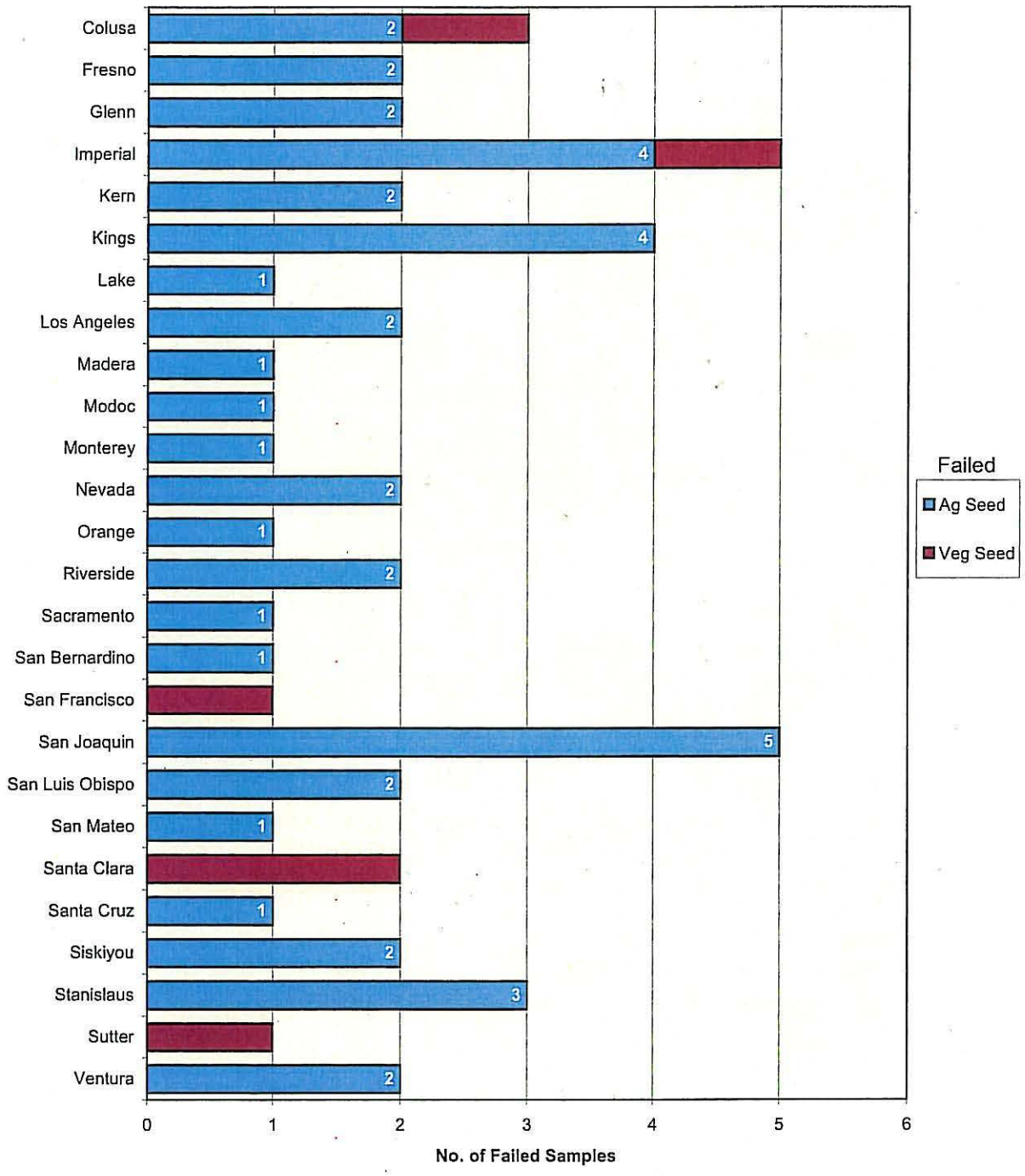


Figure 9.

Attachment 13

Analysis of Pass/Fail status by County for all samples collected during FY 2006/07

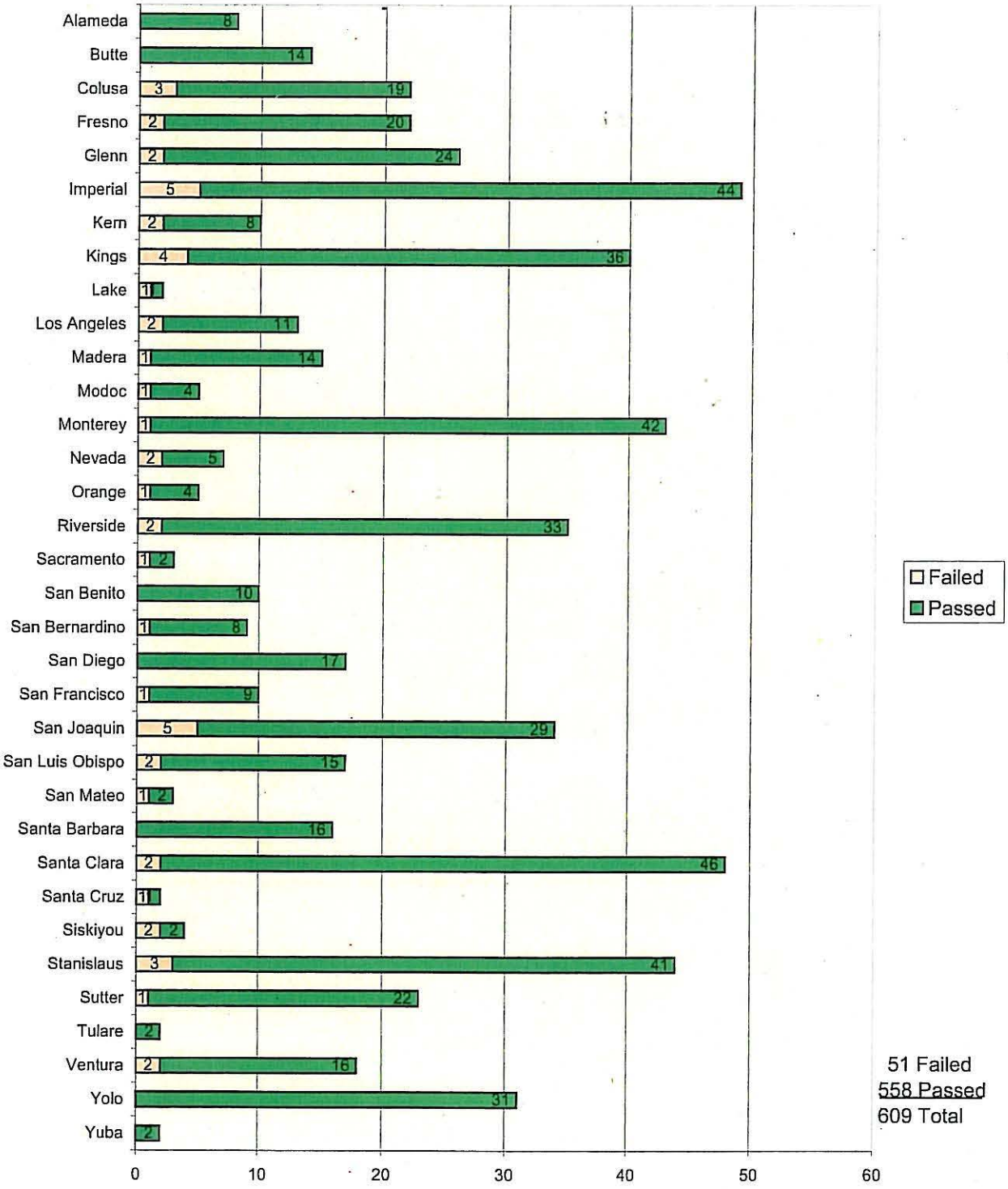


Figure 10.

Seed Advisory Board Nov. 15, 2007

Attachment 14

Seed Samples Collected by Region during FY 2006/07

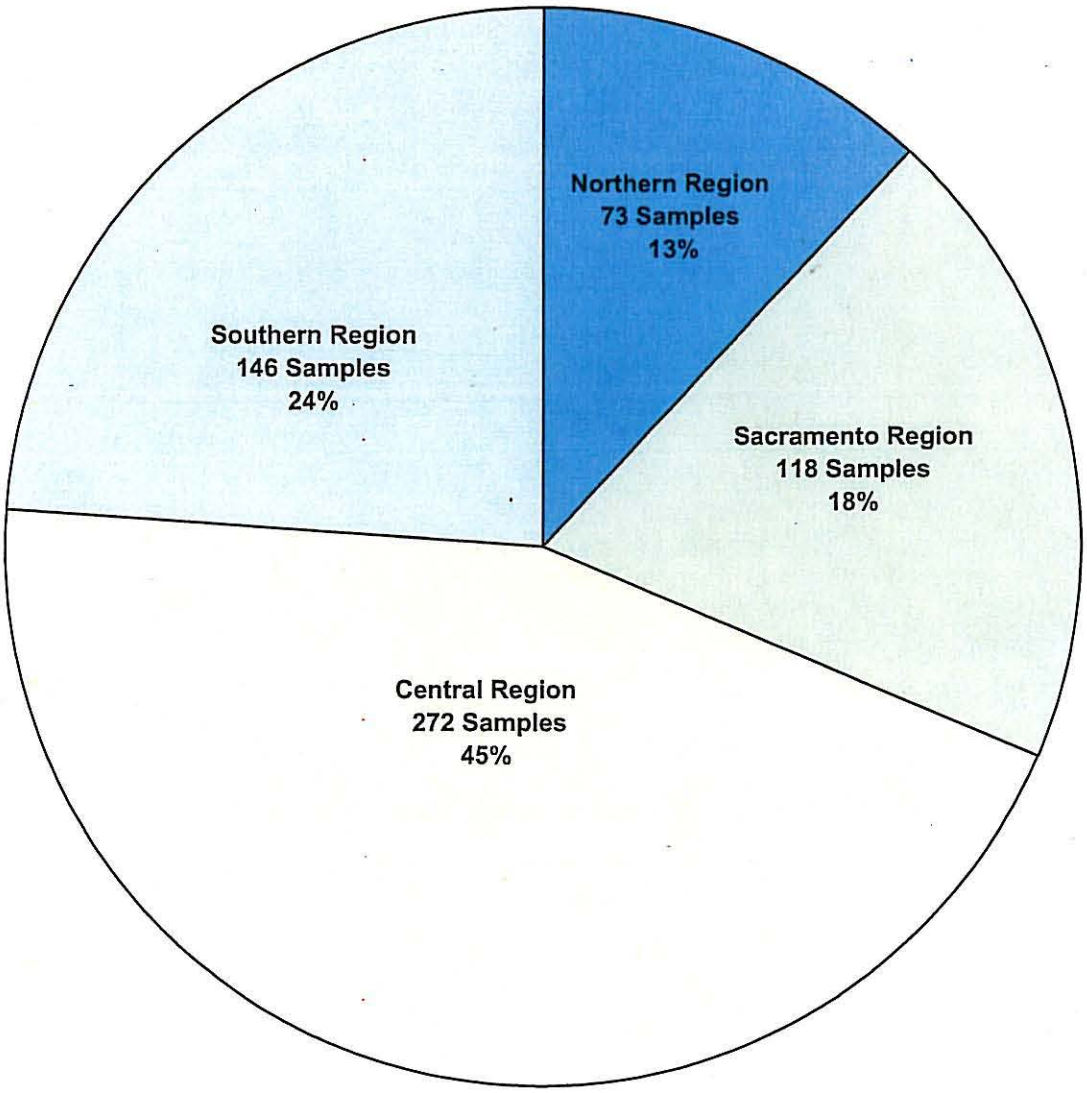


Figure 11.

Attachment 15

Analysis of Pass/Fail Status for Samples Collected in each Region during FY 2006/07

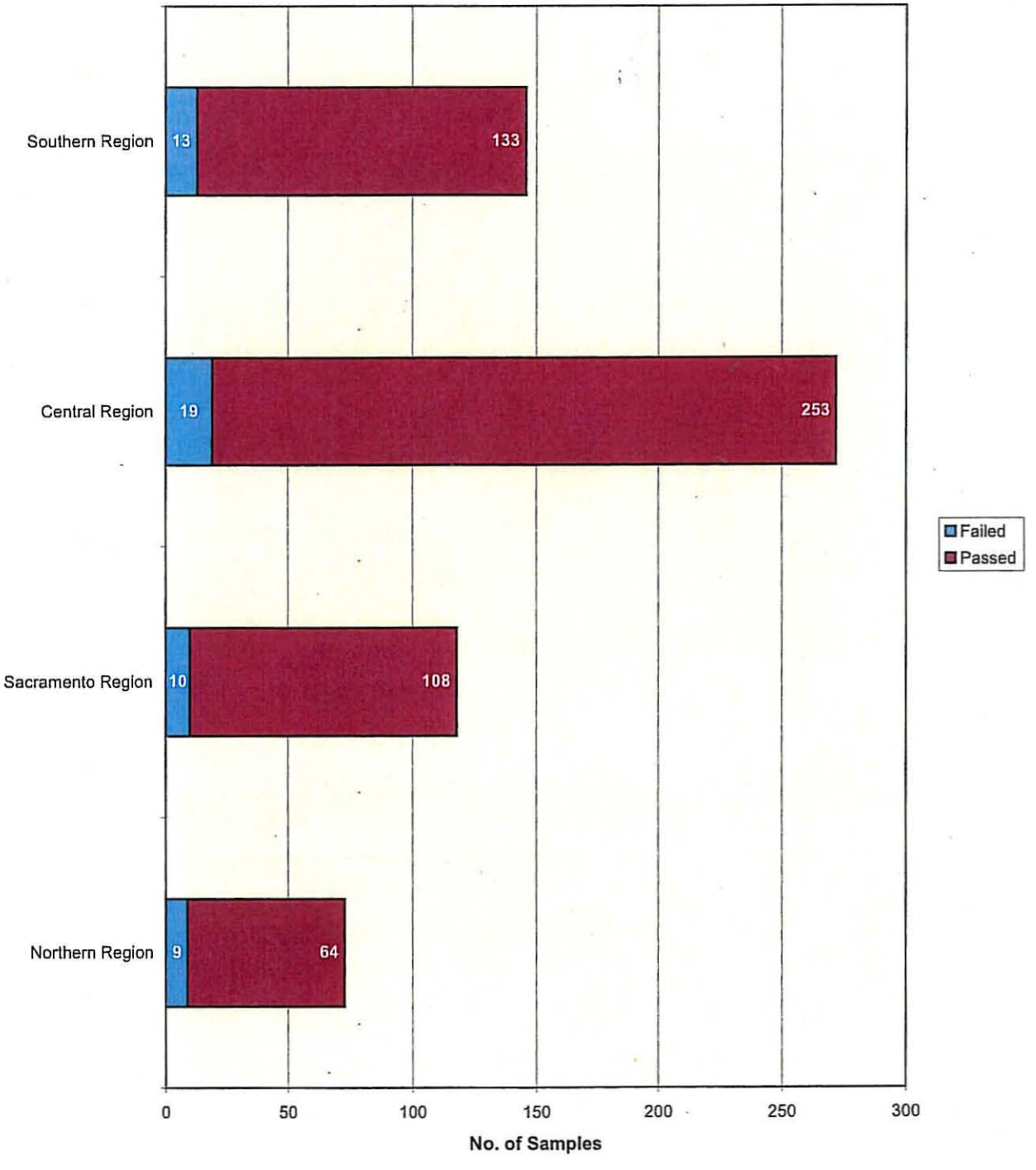
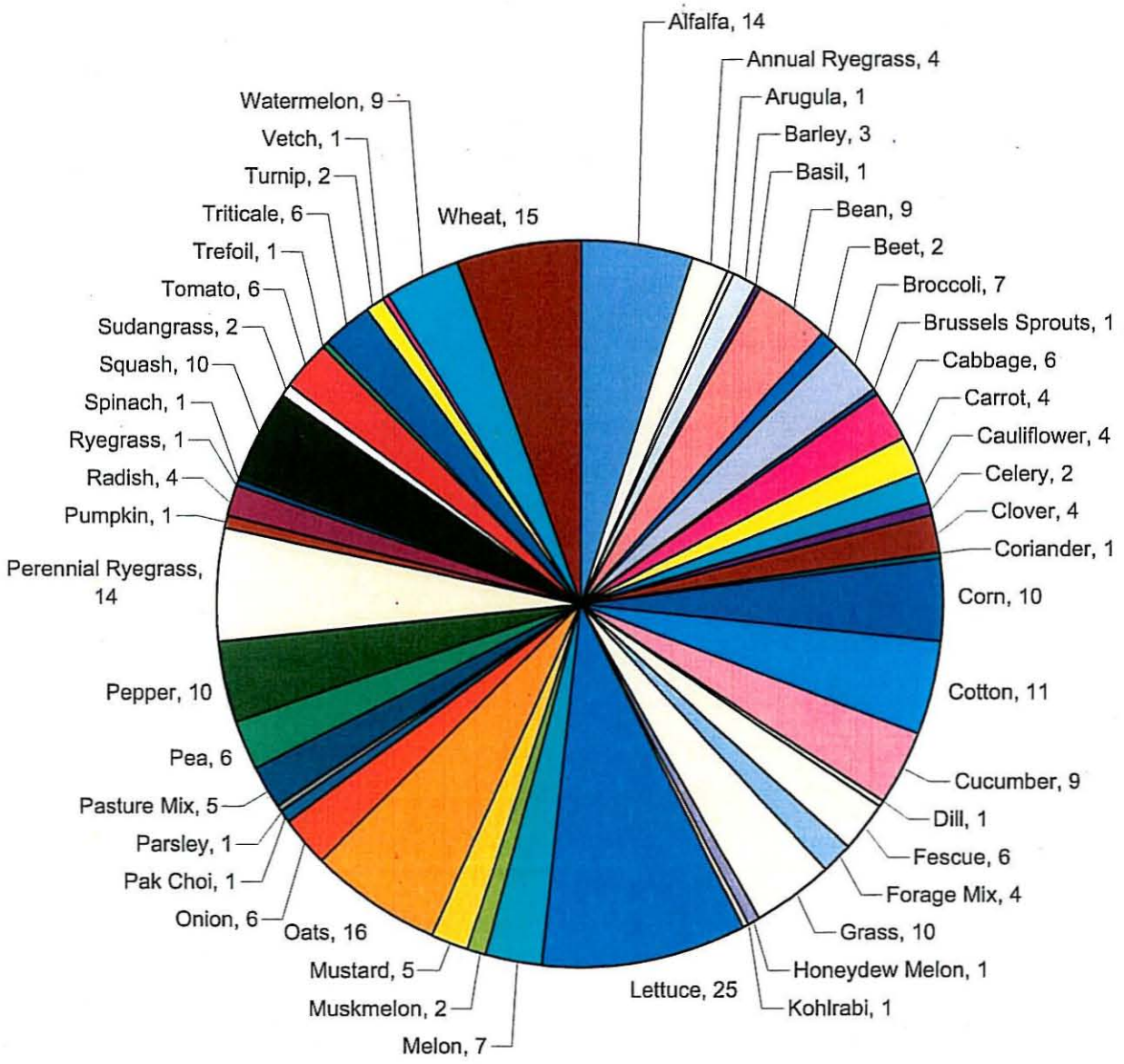


Figure 12.

Attachment 16

Kinds of seed sampled by Central Region during 2006-2007

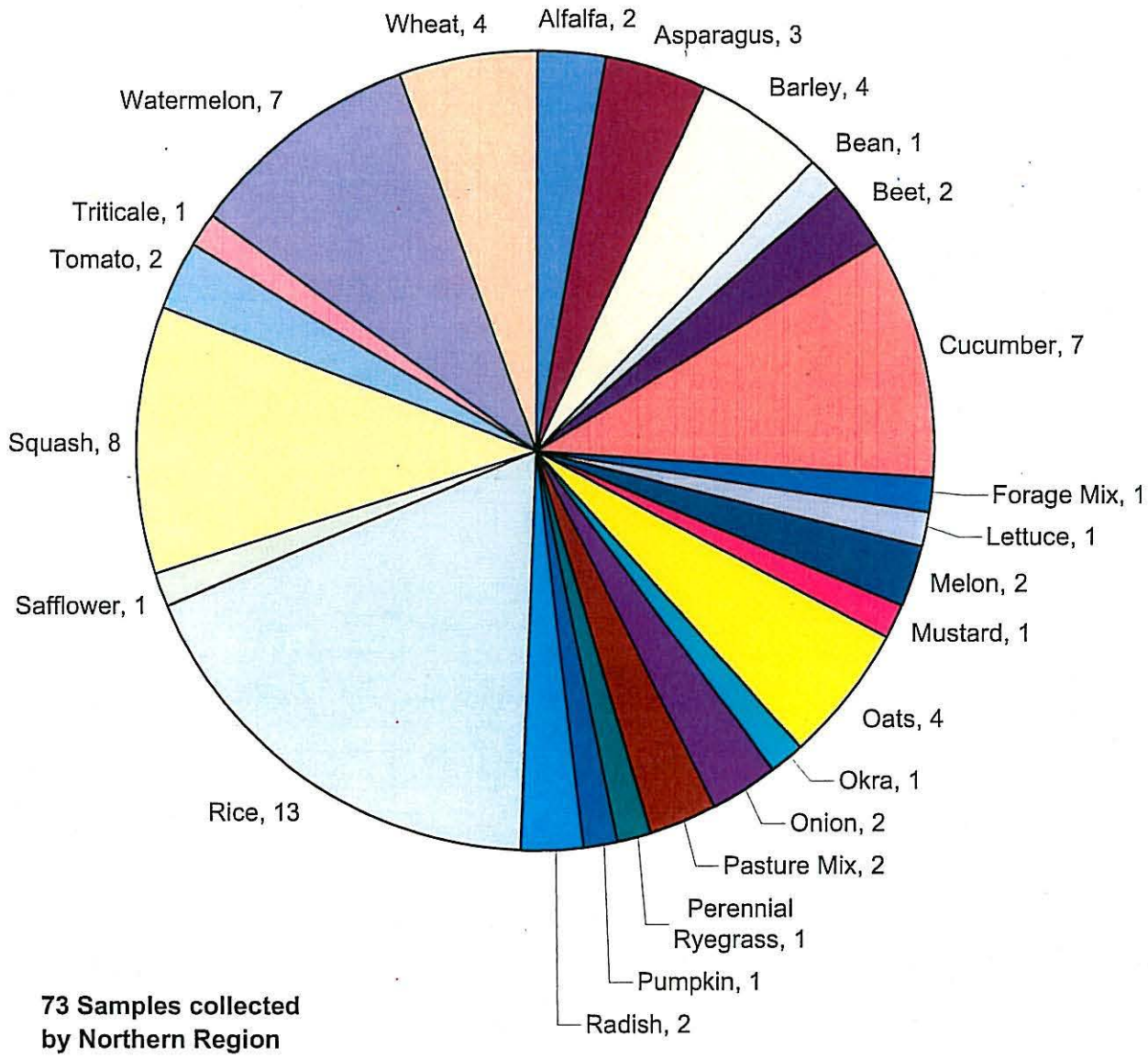


272 Samples collected by Central Region

Figure 13.

Attachment 17

Kinds of seed sampled by Northern Region during 2006-2007



73 Samples collected by Northern Region

Figure 14.

Kinds of seed sampled by Sacramento Region during 2006-2007

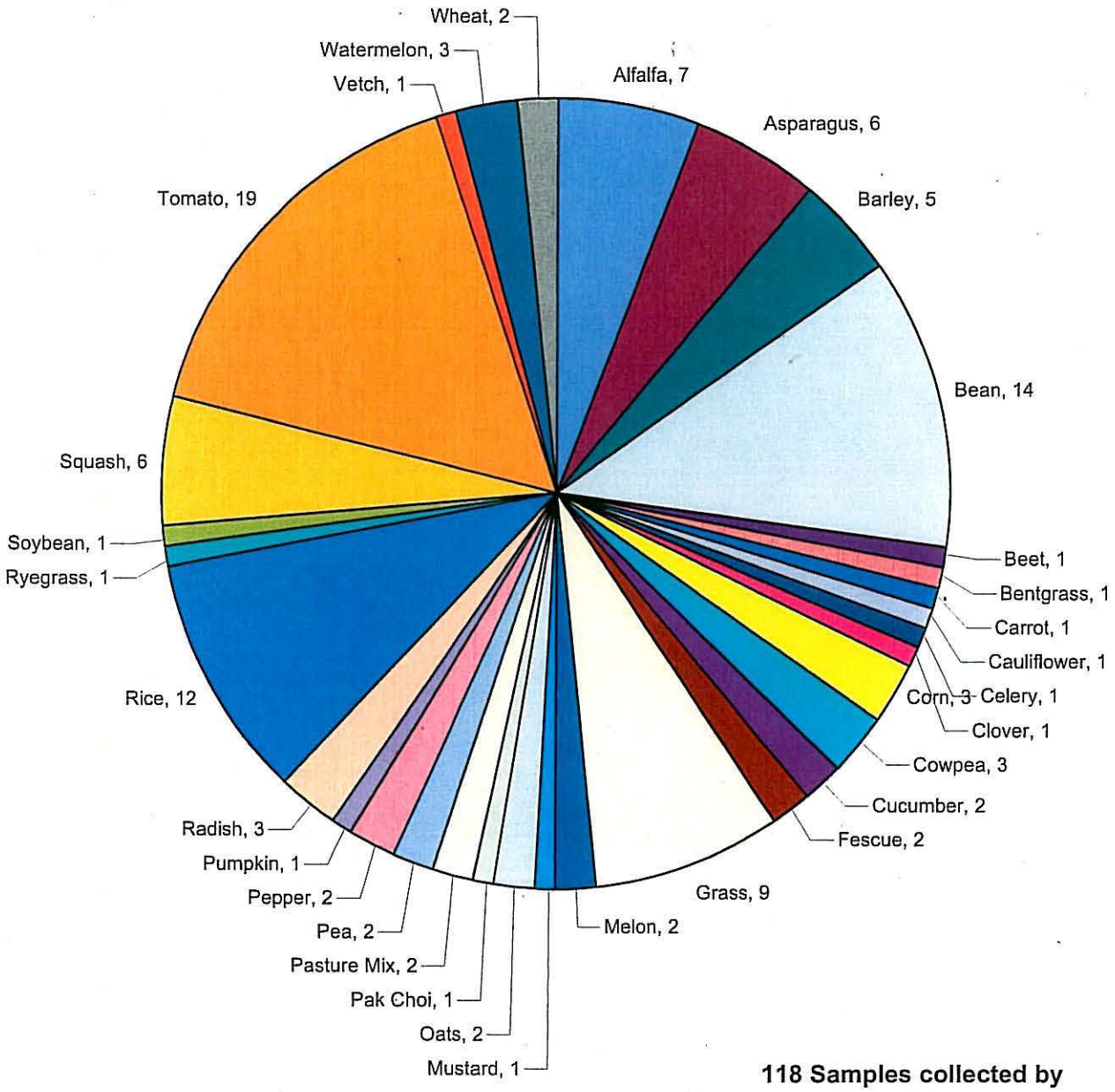
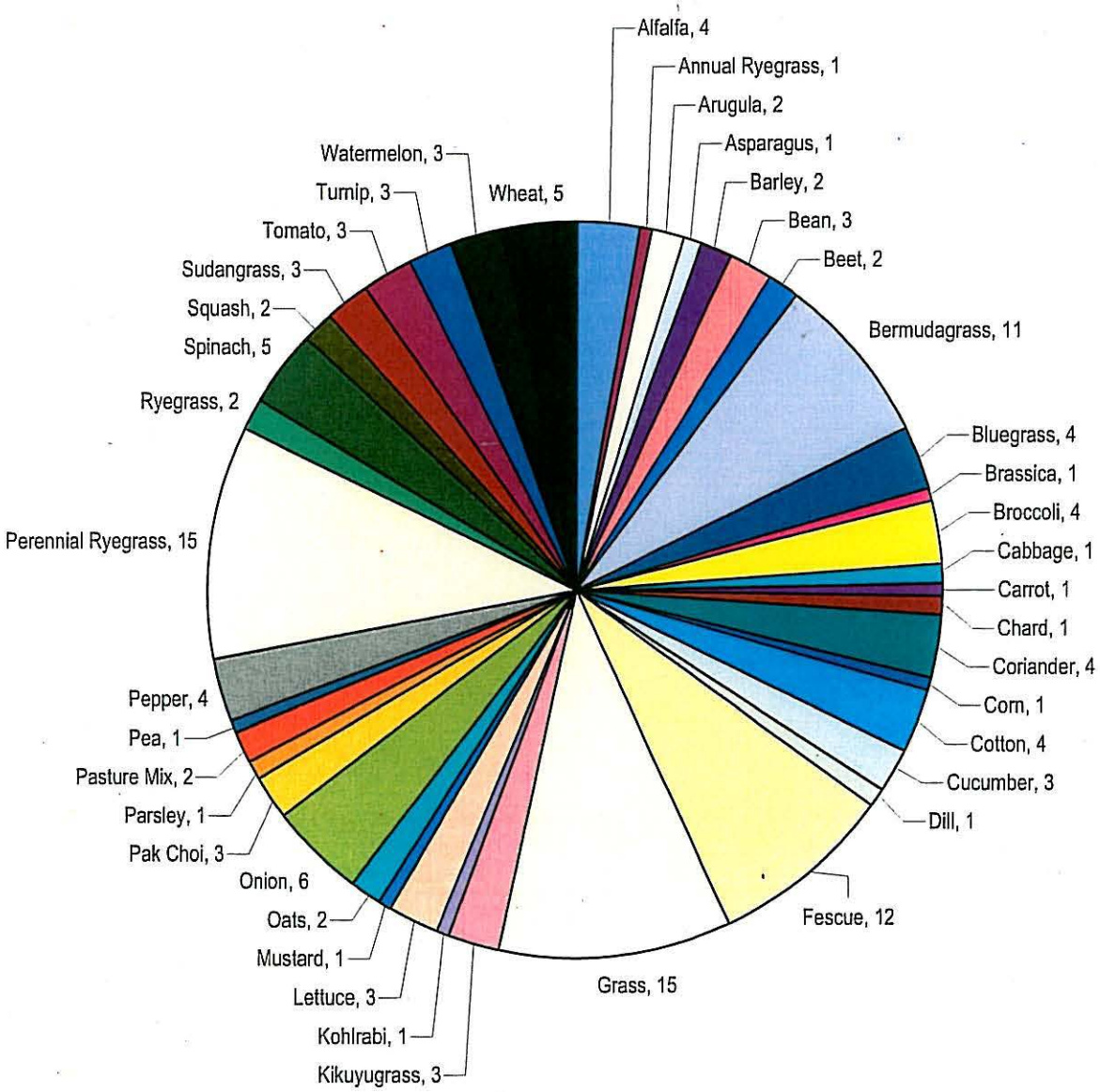


Figure 14.

Attachment 19

Kinds of seed sampled by Southern Region during 2006-2007



146 Samples collected by Southern Region

Attachment 20

REPORT ON ISSUES RELATED TO SEED COMPLAINTS

Seed complaints and enforcement activities by CDFA in 2006-2007

The Seed Services received numerous calls about potential seed complaints. Each call was immediately elevated to top priority for the staff at Seed Services. Two of the calls were related to possible weed contamination and two calls were related to poor seed or weak germination. For three of these potential complaints, a CDFA biologist was directed to immediately contact the complainant and perform the following initial steps:

Observe and photograph the crop alleged to be contaminated
Observe other fields in the production area for similar problems
Inquire about field history and cultural practices
Inform the grower of the seed complaint process
Sample any unopened containers of seed and send them to the CDFA lab

The call for the most recent "possible" seed complaint was initially received October 2nd . By October 4th, a CDFA Biologist visited the farmer and collected a seed sample. By October 11th the seed lab had purity results that I relayed to the labeler and complainant. By October 19th, I called the labeler and complainant with the germination test results. It appears that the quick response by CDFA and the findings by the lab that the seed was of excellent quality was enough to discourage the farmer from pursuing a full blown seed complaint.

This example demonstrates the importance of having flexibility of assigned duties to that staff can quickly respond to possible seed complaints and possibly diffuse the situation.

Change in how FSRTB will handle FSA Violations.

Presented July 2007 by Gene Wilson of the FSRTB, at the Annual Meeting of the Western Association of Seed Control Officials (WASCO) in St. Paul Minnesota.

The Seed Regulatory and Testing Branch (SRTB) received two FSA complaints from the western region. These FSA complaints were submitted by two states. These complaints resulted in one letter of warning. The other complaint is still under investigation.

Please note a change regarding the handling of seed violations: The SRTB used to hold serious violations until three were accumulated in a three- year period before charge sheets were sent to a seed company. If only one or two violations were accumulated in the three-year period, they were settled with letters of warning. As of January 2007, instead of holding these serious violations until three are accumulated, the charge sheets with a "pending" status are sent as soon as the investigation is complete. This action results in a faster notification of seed companies about their serious FSA violations. When three are accumulated in the three- year period, the pending charge sheets become active.

STATE OF CALIFORNIA
ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FOOD AND AGRICULTURE
A.G. KAWAMURA, Secretary

Pest Exclusion Branch
Nursery Seed and Cotton Program
1220 N Street, Room A-372
Sacramento, CA 95814
(916) 654-0493

COPY

July 30, 2007

Follow-up to May 9, 2007
CSAB Motion
&
WASCO motion

Ms. Helene R. Wright
State Plant Health Director, California
United States Department of Agriculture
650 Capitol Mall, Suite 6-400
Sacramento, CA 95814

Dear Ms Wright,

Attached is a summary of the problem that seed companies are encountering with respect to import requirements for seed to various countries.

One possible solution would be to get foreign governments to recognize the seed sampling methods taught by the USDA Federal Seed Regulatory & Testing Branch (FSRTB) as substantially equivalent to the methods used by samplers affiliated with labs accredited by the International Seed Testing Association (ISTA). Towards this end, two seed organization have recently passed motions to that effect.

1) On May 9, 2007 the California Seed Advisory Board passed a motion that the California Seed Advisory Board formally recognizes that the seed sampling methods taught by the USDA Federal Seed Regulatory and Testing Branch are substantially equivalent to the sampling methods used by individuals using ISTA guidelines and affiliated with ISTA Accredited Labs;

   In addition, John Heaton/CDFA was directed to contact USDA APHIS and any relevant organizations and regulating agencies, informing them of the Board's position and urging them to:

   A. Formally recognize the equivalence of sampling by methods taught by the USDA FSRTB to the guidelines for sampling seed taught by ISTA accredited labs.

   B. Advocate against the implementation of sampling for seed health that requires the use by USDA of ISTA guidelines as a condition for fulfillment of conditions of an Import Permit or issuance of phytosanitary certificates.

   C. Advocate for acceptance of sampling for seed health to be done by persons trained by the USDA because they use substantially equivalent to seed sampling methods specified under ISTA guidelines.

2) On July 16, 2007 the Western Association of Seed Control Officials (WASCO) unanimously approved a motion that WASCO urge USDA APHIS to approach foreign

governments and request recognition that the seed sampling methods taught by USDA FSRTB will result in a representative sample of the entire seed lot.

The hope is that on future instructions for importing seed to foreign countries, the acceptable seed sampling methods will not be limited to those specified by ISTA, but will also include seed sampling methods taught by the USDA Federal Seed Regulatory and Testing Branch.

Please call me if you have any question or would like to discuss this further. Thank you for your interest in this matter.

Sincerely,

John Heaton

John Heaton
CDFA Seed Services Program
1220 N Street
Sacramento, CA 95814

Enclosure

cc Kelly Keithly, California Seed Advisory Board - Chairman
Leslie Cahill, American Seed Trade Association – Government Affairs
Larry Krum, Western Association of Seed Control Officials – President
Richard Payne, USDA Federal Seed Regulatory & Testing Branch – Chief
Mike Colvin, CDFA Nursery, Seed & Cotton Program Supervisor

Status Report for Motion made by CSAB related to ISTA Sampling and Endorsements by County Inspectors on Phytosanitary Certificates
Presented on Nov. 15, 2007 by John Heaton
Seed Advisory Board Meeting, Sacramento, CA

On Friday, October 19, 2007, John Heaton and Mike Colvin of the Nursery, Seed and Cotton Program, participated in a conference call with USDA officials from the Federal Seed Regulatory Testing Branch (FSRTB) and from the Animal Plant Health Inspections Services (APHIS). The topic of discussion was a new endorsement requirement appearing on import permits for seed shipments to certain countries. A few countries are now requiring county inspectors to endorse phytosanitary certificates with a statement that seed samples intended for seed health testing were obtained using guidelines specified by the International Seed Testing Association (ISTA). This has caused considerable concern among county inspectors because they do not have the training to sample seeds for ISTA accredited labs. Certain county inspectors have been trained and are authorized to collect seed samples for submission to the Federal Seed Lab, but the methods used are different than those prescribed by ISTA.

The meeting participants agreed that a greater coordinated effort must be made to educate and convince foreign governments that the seed sampling methods used by the USDA, are substantially equivalent to the methods used by persons sampling seed for ISTA accredited seed labs. APHIS will lead the efforts to gain recognition of USDA accreditation programs and report back to the FSRTB. The desired outcome is for countries to recognize the methods and accreditation used by USDA so that import permits can be endorsed appropriately. The meeting was a success and begins to address concerns of the California Seed Advisory Board.

Attachment 22

Chronology of discussions at Seed Advisory Board Meetings about county ordinances and a recommendation to the secretary

From Nov. 17, 2005

Chairman Keithly asked how the proposed legislation (AB1508) would affect the Lettuce Mosaic Virus (LMV) Ordinances. Matteis noted that for years double testing of lettuce seed for LMV has occurred between Monterey County and Imperial County. Technically these county ordinances are only valid if submitted and approved by the Secretary. In the opinion of some, therefore, these ordinances are not legal, but that issue has not been pursued. It may be possible for the counties affected to simply submit their ordinances for approval by the Secretary and then the proposed legislation can move forward without objection by the counties that believe the legislation would negatively affect their ordinances. Matteis suggested that a future agenda could contain a discussion for a request by the Board, that Secretary look at the ordinances enacted by the counties.

Godfrey commented that when AB1508 was initially proposed, there was an immediate response from the Agricultural Commissioner in Imperial County stating that they would oppose the bill. Matteis noted that the Secretary already has the authority and occupies the field with regards to pest exclusion. Consequently AB1508 did not cause a problem for the counties with pest exclusion ordinances but rather they already have a problem in that they don't have the authority to be doing what they are doing.

Chairman Keithly requested that the issue of authority for county ordinances be placed on the agenda for the next meeting.

May 15, 2006 Meeting

Agenda Item #14 – Possible Recommendation to the Secretary about county ordinances

Betsy Peterson of the California Seed Association asked Chairman Scarlett if this item could be tabled until the next Board meeting. She explained that the persons that would present this item were not able to attend the present meeting.

Chairman Scarlett tabled the item.

Nov. 15, 2006

Chairman Keithly requested any changes or additions to the agenda.

Heaton noted that at the last meeting, the Board tabled the topic about requesting the Secretary to make a recommendation about County Ordinances and GMO seed labeling. Heaton requested that the tabled item be added as a subtopic under agenda item number nine, the Legislative Report.

---

7. Seed Biotechnology Center Report (Bradford)

The Chair recognized a request from Matteis to briefly comment about efforts toward coexistence.

Matteis explained that there was a statewide pre-emption bill that would have prevented each county from making their own regulations concerning this. He explained that Senate President pro Tem Don Perata, would not allow the bill to go forward or be heard, so it just kind of fizzled-out in the Senate. The bill actually passed the Assembly with fifty-one votes, which was higher than the forty one he expected.

Matteis noted that the recent situation with the Liberty Link rice may make it difficult to pass any legislation for a while.

9. Legislative Report
The topic of county ordinances was not addressed and remained on the table.

May 9, 2007 Meeting

15. Legislative Report
The Board was reminded about the issue of county ordinances and a recommendation to the Secretary was still on the table because it was formally dismissed at the Nov. 2006 meeting.

The Board was confused about what the original issue was and asked Heaton/Peterson to review the issue and refresh the Board's memory at the next meeting, when Matteis could provide some additional recommendations to the Board.

The item remained tabled.

Attachment 23

PVP Complaints and possible new sections for the CSL

Presented by John Heaton

Seed Advisory Board Meeting Nov. 15, 2007

In late August, a labeler requested assistance in a possible brown-bagging operation and potential violations of the labeling requirements for some PVP varieties.

Two CDFA biologists accompanied me to a seed conditioning facility in Northern California to investigate these allegations. I took pictures of containers and collected 10 seed samples of numerous PVP varieties. The containers only had the grower name, a lot number, and the variety name with a total weight. I requested and received tallied weights for each lot number.

I then drafted a letter to the two seed companies requesting their cooperation in determining if the amounts of seed in containers, were in excess of their original sales to the growers and therefore represented illegal propagation of PVP varieties. I also asked each company to provide me with pure seed samples of the PVP varieties so I could include them with the samples in a trueness-to-variety test conducted each year by the Federal Seed Lab. A copy of the letter was sent to the conditioner as well.

With the letter in hand, both PVP certificate holders approached the conditioner and to the best of my knowledge, have negotiated a settlement or at least a new understanding.

The Board should know that this is the second alleged large-scale brown bagging operation that CDFA has tactfully dealt with in the last two years. My experience from these enforcement actions is that the California Seed Law does not offer much deterrence to this kind of activity. While it is true that intrastate violations of PVP are violations of the FSA, resources for enforcement of PVP by the FSRTB are limited and the investigation and prosecution can become quite involved and lengthy.

I therefore suggest that the Board consider ways to strengthen the California Seed Law in order to deter violations of PVP labeling. As was discussed at the last Board meeting, Texas has recently enacted a $2000 fine for such violations.

As a follow-up to that previous discussion, I met with Stephen Brown, who is in charge of permits and regulations at CDFA. I explained how Texas implemented a fine for PVP violations and asked him if we could do something similar.

He found sections 5309 through 5312 in the Quarantine Section of the Food and Agricultural Code. These sections provide the option for the Department to pursue civil penalties for violation of quarantine sections of the code. It appears that these sections could be easily modified and be made relevant to violations of labeling PVP varieties.

For example, I changed the references of sections 5309 through 5312 to new sections that could be added to the seed law. The new section numbers would be 52489 through 52492.

PVP Complaints and possible new sections for the CSL

Presented by John Heaton

Seed Advisory Board Meeting Nov. 15, 2007

Very briefly, section 52490 makes violation of PVP labeling requirements punishable by fine for not more than $1000 for the first offense and $2,500 is a second or subsequent offense occurred within three years.

Section 52490 provides court proceedings and civil liability up to $10,000 for each offense.

Section 52492 provides authority for the Secretary or Commissioner to levy a civil penalty in lieu of any civil action.

It is important to remember that civil penalties are different than civil suit, which is what the PVP certificate holder can bring against a violator of PVP.

The point is:

There is a mechanism to put some teeth into the California Seed Law for violations of PVP labeling requirements. If the Board wishes to pursue stronger language for violations of PVP labeling requirements, the Board can ask the Seed Services Program to request CDFA Legal to review the first draft of proposed sections 52490 through 52493. If CDFA Legal finds them acceptable, the proposed sections can be forwarded to CSA for consideration of sponsorship as proposed legislation.

The proposed sections are presented below:

Already in the F&C – not much of a deterrent

52285. If the Secretary or the Commissioner finds that any person has violated any provision of this chapter, he may institute proceedings in the court of competent jurisdiction in the area in which the violation occurred, to have such person convicted of the violation, or he may file with the district attorney with the view of prosecution such evidence as may be deemed necessary.

Possibly Add

52489. Any violation of section 52454(f) of this chapter by any person, or an agent of any person, is an infraction, punishable by a fine of not more than one thousand dollars ($1,000) for the first offense. For a second or subsequent offense within three years of a prior conviction of a violation section 52454(f) of this chapter, the violation is punishable by a fine of $2,500.

PVP Complaints and possible new sections for the CSL

Presented by John Heaton

Seed Advisory Board Meeting Nov. 15, 2007

52490. (a) In addition to any other penalties prescribed in this chapter, any person who violates section 52454(f) or any regulation adopted pursuant to section 52454(f) is liable civilly in an amount not exceeding ten thousand dollars ($10,000) for each violation.

(b) Upon a complaint by the director, the Attorney General may bring an action for civil penalties in any court of competent jurisdiction in this state against any person violating section 52454(f) or any regulation adopted pursuant to section 52454(f).
(c) Upon the failure of any person to comply with section 52454(f), the Attorney General, upon request of the director, or the county counsel upon request of the commissioner, as the case may be, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person from continuing any activities in violation of section 52454 (f). The court shall issue an order directing the person to appear before the court at a certain time and place and show cause why the injunction should not be issued. The court may grant the prohibitory or mandatory relief that may be warranted. The court may also issue the temporary relief that may be necessary to preserve the status of the parties until a hearing can be held.

(d) Any funds recovered by the department pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this chapter.

52492. (a) In lieu of any civil action pursuant to Section 52490, the secretary or the commissioner may levy a civil penalty against a person violating section 52454 (f) or any regulation adopted pursuant to section 52454(f) in an amount not to exceed two thousand five hundred dollars ($2,500) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the evidence and a right to present evidence on his or her own behalf.

(c) A review of the decision of the secretary to impose a penalty may be sought by the person against whom the penalty was levied within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) The person against whom a civil penalty is levied by a commissioner may appeal to the secretary within 10 days of the date of receiving notification of the penalty, as follows:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party, at the time of filing the appeal or within 10 days thereafter, may present written evidence and a written argument to the secretary.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set

there forth. This time requirement may be altered by an agreement between the secretary and the person appealing the penalty.

(5) The secretary shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.

(7) On an appeal pursuant to this section, the secretary may sustain, modify by reducing the amount of the penalty levied, or reverse the decision. A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner who levied the penalty, if this is the case.

(8) Review of the decision of the secretary may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) Any funds recovered by the commissioner pursuant to this section shall be deposited in the county general fund in the county in which the action is brought and shall be allocated to the commissioner to cover costs related to the enforcement of this chapter. Any funds recovered by the secretary pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this chapter.

52492. After the exhaustion of the appeal and review procedures provided in Section 53491, the commissioner or his or her representative may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the secretary or his or her representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

Attachment 24

Status of proposed Arbitration Regulations
Presented by John Heaton
Seed Advisory Board Meeting - Nov. 15, 2007

Draft with comments from CDFA Legal – Sept. 2006

Matteis to meet with CDFA Legal
- in preparation of meeting new CDFA legal identified additional concerns/questions
- spring 2007 meeting was postponed due to schedule conflict
- CDFA attorney transferred to new department
- CDFA chief attorney retired – fall of 2007
- Matteis accepted position at Farm Bureau

At request of CSA Staff, new meeting held in early Sept. 2007
In attendance, all relatively new players

Chris Zanobini – CSA
Betsy Peterson – CSA
Mike Colvin – CDFA NS&C Program Supervisor
Kelly Loyer – CDFA Legal Office – Attorney
John Heaton – CDFA Seed Services

Purpose of meeting:
Review status of proposed regulations & determine how to proceed.

Several points to discuss with industry.

1. Current regulations for the ADR process go from CCR section 3915 to 3918. These current regulations outline the complaint filing, conciliation and investigative committee meeting and mediation process.

The new proposed arbitration regulations are numbered to go from CCR section 3915 to 3918. As such, they effectively over-write the previous conciliation and mediation steps that are already in regulation.

Is the intent to replace existing regulations with new regulations, thus removing the present initial two steps in present regulations? Staff thought the intent of the ADR process was to have an inexpensive three step process in regulation. Records back to 1999 indicate this was previously a point of confusion, but we did not find records that clearly or definitively stated what the industry wanted.

The participants at the meeting were to **seek clarification** from the parties they represent, as to the intent and structure of the ADR.

Heaton contacted Dispute Resolution Facilitators (previously known as mediators) on staff at **CDFA Agricultural Marketing Service**. They communicated that their historical understanding was that the ADR was to be a 3-step process for seed complaints.

Heaton also learned that use of an outside arbitrator would cost~$450/hr. CDFA-AMS services estimated that an arbitration for a typical seed complaint would cost about $10,000 on the outside.

The comment was made that if the intent is to use an inexpensive ADR process, it did not make sense to remove the existing regulations for the proposed and more expensive regulations that **remove department oversight** and implement more expensive outside oversight of the ADR.

Status of proposed Arbitration Regulations
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2. Proposed regulations call for a Seed Dispute Council to be presided over by an arbitrator that may advise the Council on matters of law. CDFA legal has informed us that to advise on matters of law, the **arbitrator will have to be an attorney**.

3. CDFA Legal requested CSA Legal to determine why they believe proceedings (arbitration) by the Seed Dispute Council could be kept confidential and not be subject to the Bagley-Keene Act.

[The **Bagley-Keene Act** covers all state boards and commissions. It requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized by the Act to meet in closed session.]

Comment;
Current regulations provide for conciliation, investigative committee meeting and mediation.
How it works.
- $250 complaint filing fee
- Formal letter of complaint identifying problem with seed and estimated losses.
- Conciliation.... Parties urged to dialogue and try to resolve their dispute.
- CDFA Seed Services conducts an investigation (60 days) of any factors that Seed Servicies thinks are relevant and that the Investigative Committee will ask about.
- Investigative Committee of 2 Ag Commissioners, 2 Labelers and 2 Growers plus a CDFA Rep is formed and hears the details of the complaint and investigation.
- Investigative Committee drafts a findings report within 30 days.
- Disputing parties receive copy of findings report
- Have 10 days to request facilitator for dispute resolution (mediation).

- The Secretary may terminate the complaint mediation procedure and issue an Order of the Secretary stating that the requirement of Section 52332(f) of the Food and Agricultural Code has not been met if the **complainant**
  (1) fails to maintain the crop until notification of release;
  (2) withdraws the complaint at any time;
  (3) refuses to cooperate in the investigation;
  (4) fails to request mediation after receipt of the report of investigation; or
  (5) fails to appear at the mediation hearing without reasonable cause.

The Secretary may release the complainant to pursue other dispute resolution mechanisms by issuing an Order of the Secretary stating that the requirement of Section 52332(f) has been met if the seller or labeler of the seed (**respondent)**:
  (1) fails to file an answer;
  (2) refuses to cooperate in the investigation procedure;
  (3) **fails to agree to mediation;** or
  (4) fails to appear at the mediation hearing without reasonable cause.

Once the complaint is released, the parties are free to pursue other legal remedy, including arbitration.

At the midyear meeting in September 2007, CSA membership was not in favor of replacing existing ADR language for a more expensive Arbitration procedure. They recommended keeping the ADR process through mediation followed by CDFA assisting, scheduling or perhaps even just urging the parties to participate in arbitration.